

ERDC/CERL SR-04-23

Construction Engineering
Research Laboratory



**US Army Corps
of Engineers®**

Engineer Research and
Development Center

National Training Center-Fort Irwin, California

Native American Consultation Meeting at Fort Mojave, Nevada, Held on 2-3 October 2003

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August 2004



National Training Center-Fort Irwin, California: Native American Consultations Held at Fort Mojave, Nevada, Held on 2-3 October 2003

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Final Report

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Prepared for National Training Center-Fort Irwin, California, 92310

Under Project 1R00935056, Work Unit 2GCERL0019

ABSTRACT: Many federal laws, regulations, and executive orders promulgated since 1990 specifically require consultation with Native American tribes when a federal agency makes decisions concerning cultural resources and traditional places. Consultation is founded on the Nation-to-Nation relationship between the United States and federally recognized tribes. To meet both the letter and the spirit of the law, the National Training Center-Fort Irwin, California, conducted a meeting as part of the agency's continuing consultation with tribal governments. The consultation meeting was hosted by the Fort Mojave Indian Tribe, a federally recognized tribe, and held at the AVI Resort and Casino owned by tribe, on 2-3 October 2003. Sixteen tribes were invited to attend. Attendees presented and discussed (1) Comprehensive Agreements (CAs) with individual tribes having a cultural interest in the geographical region, (2) the ethnohistoric and ethnographic cultural affiliation study of the mid-Mojave region, (3) Fort Irwin-NTC Programmatic Agreements (PAs) with individual tribes having a cultural interest in the geographical region, and (4) proposed undertakings on Fort Irwin and the current and projected measures for protection/mitigation of cultural resources within these project areas. A transcript of the consultation meeting is included in this report.

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Preface

This study was conducted for the U.S. Army National Training center — Fort Irwin, California, under project 1R00935056, “To Organize, Facilitate, and Moderate a Meeting Between Fort Irwin and the Federally Recognized Indian Groups,” through Military Interdepartmental Purchase Request 2GCERL0019, 29 March 2002. The technical monitor was Mr. William (Mickey) Quillman, Natural and Cultural Resources Manager, NTC-Fort Irwin.

The work was performed by the Land and Heritage Conservation Branch (CN-C) of the Installations Division (CN), Construction Engineering Research Laboratory (CERL). The CERL Principal Investigator was Tad Britt. Compilation of this report was admirably completed by Tatiana Brecht with contributions and materials provided by Paige Peyton, Geomarine Inc. The technical editor was Gloria J. Wienke, Information Technology Laboratory. Dr. Lucy A. Whalley is Chief, CEERD-CN-C, and Dr. John T. Bandy is Chief, CEERD-CN. The associated Technical Director was Dr. William D. Severinghaus, CEERD-CV-T. The Director of CERL is Dr. Alan W. Moore.

CERL is an element of the U.S. Army Engineer Research and Development Center (ERDC), U.S. Army Corps of Engineers. The Commander and Executive Director of ERDC is COL James R. Rowan, and the Director of ERDC is Dr. James R. Houston.

1 Introduction

Background

Many federal laws, regulations, and executive orders promulgated since 1990 specifically require consultation with Native American tribes when a federal agency makes decisions concerning historic properties and archaeological sites. However, this legislation doesn't specifically define consultation, although the common meaning is to ask advice and share information to make an informed decision. Consultation does not imply mere notification of a pending action; nor is it a method to obtain consent or agreement.

Consultation is founded on the government-to-government relationship between the United States and federally recognized tribes. It provides an invaluable method of obtaining expert advice, ideas, and diverse opinions from Native American constituents regarding control and appropriate treatment of cultural resources.

To meet both the letter and the spirit of the law, the National Training Center-Fort Irwin, California, conducted a consultation meeting as part of the agency's continuing consultation with tribal governments.

The National Training Center

The National Training Center at Fort Irwin is located 37 miles northeast of Barstow, California, and is a U.S. Army installation (see Figure 1). The base is the home of the U.S. Army National Training Center (NTC) and also includes the National Aeronautics and Space Administration (NASA) Goldstone Deep Space Tracking Station. The installation covers 642,730 acres (260,113 hectares) in the north-central Mojave Desert encompassing over 1,000 square miles (2590 square kilometers).



Figure 1. Location of Fort Irwin and the Avi Resort.

Objective

The objective of this consultation meeting was to establish an open and constructive dialogue between the U.S. Army and the Native American tribes who have cultural resource interests at NTC-Fort Irwin. This dialogue is conducted on a government-to-government level regarding the military mission of NTC and potential tribal issues with respect to the installation and its Area of Potential Effect (APE).

Meeting Site

The consultation meeting was held at the AVI Resort and Casino owned by the Fort Mojave Indian Tribe, a federally recognized tribe. The AVI Resort is located on the about 14 miles southwest of Laughlin, Nevada; or about 110 miles southeast of Las Vegas, Nevada.

Approach

This meeting occurred on 2-3 October 2003 and was hosted by the Fort Mohave Indian Tribe. The following topics were presented and discussed:

- NTC-Fort Irwin Comprehensive Agreements (CAs) with individual tribes having a cultural interest in the geographical region of the NTC. These CAs would specify mutually agreed-upon procedures in the event of an inadver-

tent discovery of cultural items, per the Native American Graves and Repatriation Act (NAGPRA) of 1990.

- The ethnohistoric and ethnographic cultural affiliation study of the mid-Mojave region (i.e., those federally recognized tribes that claim aboriginal, ancestral, or ceded land ties to the geographic area that now constitutes NTC-Fort Irwin and its APE).
- Fort Irwin-NTC Programmatic Agreements (PAs) with individual tribes having a cultural interest in the geographical region of the NTC, per the National Historic Preservation Act Section 106.
- Proposed construction projects on Fort Irwin and the current and projected measures for protection/mitigation of cultural resources within these project areas.

The NTC-Fort Irwin Cultural Resources Program (CRP), in conjunction with the NTC-Fort Irwin Department of Public Works (DPW) and ERDC-CERL archaeologist, Mr. Tad Britt, developed a schedule and timeline for the meeting:

- Mailing of invitations: Deputy Commander and Chief of Staff Colonel Edward L. Flinn sent meeting invitations (Appendix D) to consulting tribes on 28 August 2002. These invitations were in the form of a letter to the tribal chairperson and/or tribal NAGPRA coordinator. A list of these contacts is in Appendix G. The letter discussed the date and purpose of the meeting, explanation of payment for travel expenses, and travel logistics.
- Telephone follow-ups: One week before the scheduled meeting, follow-up telephone calls were made to the consulting tribes by Ms. Tatiana Brecht of ERDC-CERL. During these telephone calls, Ms. Brecht asked if a tribal representative would be attending the meeting, and asked if there were any additional topics they would like included in the meeting agenda. The results of the telephone effort are included in Appendix F.

The meeting opened at 1300 hours (1:00 PM) on Thursday, 2 October, with presentations and discussions held that afternoon and the following day. On the afternoon of 3 October 2003, tribal representatives and other invited guests were shown several Native American sites located near the AVI Resort.

Mode of Technology Transfer

This report will be sent to each tribe invited (listed in Appendix G) as well as to tribes who have since the meeting indicated their interest in receiving a copy.

This report will be made accessible through the World Wide Web (WWW) at URL:

<http://www.cecer.army.mil>

2 Tribal Consultation Meeting Schedule

Thursday, 2 October 2003

Guests arrived mid-day and checked in at AVI Resort. A block of rooms had been reserved under Fort Irwin, NTC. Each Tribal representative was responsible for keeping time and trip records and receipts for all of her or his lodging, meals, and travel expenses. A welcome package was waiting at the AVI Resort.

1300 Began meeting at AVI Resort

- Welcome – Deputy Commander and Chief of Staff, Col. Edward L. Flinn
- Pledge of Allegiance
- Native American Prayer
- Group Introductions

1330 Topics for Discussion – Col. Flinn

1. NAGPRA Comprehensive agreements
2. Programmatic agreements
3. NTC Cultural Resources Program
4. Listening Session

1345 NAGPRA Comprehensive Agreement Presentation – Mr. Tad Britt

1400 NAGPRA Comprehensive Agreement – Open Discussion

1445 – 1500 **BREAK**

1500 Programmatic Agreements Presentation – Ms. Paige Peyton

1600 Listening Session

1630 Concluded for the day

1830 Fort Mojave Tribal Dancers social program

Friday, 3 October 2003**0900** Resumed meeting

- Pledge of Allegiance
- Native American Prayer

0915 NTC Cultural Resources Program

- Land Expansion Results
- Cultural Affiliation Study

1015 – 1030 BREAK**1030** (NTC Cultural Resources Program Continued)

- Fiber Optic network

1130 – 1300 LUNCH**1300** (NTC Cultural Resources Program Continued)

- Railroad Spur
- Block Surveys
- Site Evaluations

1315 Listening Session**1415** Meeting adjourned

Instructions and assistance of completing Travel Vouchers were provided to ensure prompt reimbursement for any out-of-pocket expenses.

1500 – 1730 Cultural Site Visits

Met at AVI hotel lobby for cultural sites visit. Transportation was provided. Water, soft drinks, and snacks were also provided.

1730 Returned to AVI Resort and concluded meeting.

3 Meeting/Consultation Results

The Native American consultation Meeting took place at the AVI Resort and Casino, Laughlin, Nevada, 2-3 October 2003. Representatives from six tribes attended the meeting. Representatives from NTC-Fort Irwin, ERDC-CERL, and various Corps of Engineers contractors also attended the meetings.

The following summarizes the key points made at the face-to-face meeting between tribal representatives and Fort Irwin representatives.

Key points from the Fort Irwin Tribal Consultation Meeting

1) Monitoring of construction sites, cultural resource programs

3 October

- a) pp.85-87. During excavation of fiber optic trench, need to have either/both a trained archaeologist (as opposed to a biologist with some archaeological training, or simply an observant machine operator) and/or a Native American observer (Chad Smith).
- b) p.101. Should have Native American monitors for activities that could potentially impact cultural resources at Fort Irwin (Kane).
- c) p.126. Should have Native American monitors for cultural resources (Tito Smith).

2) In-kind Compensation to entire tribes

3 October

- a) pp.97-98. Possibility of the Army building museums (or other compensatory act) for the Mojave and Chemehuevi as partial compensation for past wrongs and for the contemporary difficulty of accessing important cultural sites on Army lands (Edna Smith).

3) Financial compensation to Native consultants.

3 October

- a) p.49. Compensation required to informants who aid in identifying villages for section 106, 110, ethnographic projects (Chad Smith).

- b) pp.127-130. Two problems: (1) Native American consultants are not getting paid and (2) This issue was brought up in 2002, and it appears that no action has been taken on it (Ray).
- c) p.135. Quillman promised to tell tribes in writing within 90 days what kind of compensation could be made to Native Americans for what kind of activities (90 days from 3 Oct = 1 Jan 2004).

4) Modelling Nellis Air Force Base's consultation program

2 October

- a) pp.107-9. Fort Irwin – NTC should emulate the Native American consultation program at Nellis Air Force Base. This program includes an advisory council of tribal organizations and their representatives that actively participate in ethnographic studies and archaeological monitoring, as well as providing the opportunities for tribal members to go on field visits of important cultural sites on-base (various individuals).

3 October

- b) pp.53-54. Fort Irwin should have an expansion-specific study with more “hands-on” participation by the tribes, modeled after Nellis (Chad Smith).
- c) p.135. Quillman promised to contact Nellis and get information on their program.

5) Dialog with non-Federally recognized tribes

3 October

- a) p.37. While the Army may not see non-Federally recognized tribes as having legitimacy, the Federally-recognized tribes acknowledge non-Federally recognized tribes as legitimate, and they want them included in the process. The Kawaiisu and Pahrump Paiute in particular were mentioned. Britt suggested having a Federally-recognized tribe sponsor the non-recognized tribes as a solution to this issue (Tito Smith, Chavez, Britt).
- b) pp.45-46. The Federally-recognized tribes could create a tribal group where they will make decisions among themselves, and they would have the right to recognize Federally unrecognized tribes (Horalek).
- c) pp.64-65. Issue of non-Federally recognized tribes and their level of participation (Donald Smith, Chavez, Ray).
- d) pp.136-7. NTC should contact Richard Arnold of the Pahrump Paiute, and include him in the consultation process (Chavez).

- e) pp.145-6. Federally unrecognized tribes issue – Native Americans recognize all tribes, regardless of federal status (Swain, Chavez).
- f) pp.144-9. All information provided to this meeting's invitees should also go to all branches of the Timbisha Shoshone since they are all interested tribal members, regardless of BIA recognition (various individuals).

6) Changes to Programmatic Agreement

2 October

- a) pp.73-4. In PA, the word "other" should be stricken from the phrase "Native American groups or other interested parties," so as to read "Native American groups and interested parties." The inclusion of the word "other" conflicts with government-to-government consultation requirements (Chad Smith).
- b) p.92. In PA, there should be a clause for the reimplementation of an archaeological survey or other cultural resources project, in the event that such an ongoing project is cut or diminished due to budget concerns (Chad Smith).

7) Other NAGPRA Issues

2 October

- a) pp.97; 117. In the event of a NAGPRA dispute involving the U.S. Army, to what extent, if any, does the Park Service become involved? (No meeting participant could answer this question.) (Chad Smith).
- b) pp.37-38; 46; 57. Fort Irwin needs information from tribes on how to identify burials so that (1) the CAs may be completed; (2) the troops can be told what to look for when they're out and about; and (3) any currently unidentified-yet-curved NAGPRA items can be identified as such (Britt, Gundrum, Horalek).
- c) p.103. A letter should be sent out to all tribes indicating specific information needed from them for NAGPRA compliance (see 7b above) (Britt).

8) Determining Eligibility

3 October

- a) pp.18-19. Reevaluating sites deemed non-eligible, yet where shovel tests were yielding artifacts at 40 cm (Chad Smith).

9) Miscellaneous

3 October

- a) pp.19-22. Fort Irwin predictive model and concerns of possible flawed applications of it (Chad Smith, Britt).
- b) p.22. Preventing public access to the utility corridor in the California Desert Conservation area (Chad Smith).
- c) p.72. Tribes urged to make maps of their past tribal areas for potential future law cases (Barrackman).
- d) pp.140-1. Britt proposed visits to cultural sites on Fort Irwin.

4 Post-Meeting Actions

Since the consultation meeting of 2-3 October 2003, NTC-Fort Irwin has taken the following actions in accordance with the key points raised during discussion.

Actions taken as of 31 January 2004

1. Contacted Richard Arnold, Chairperson of the Pahrump Band of Paiutes; sent him a copy of the 2002 consultation meeting compendium; and added the Pahrump Band to the Fort Irwin Native American contact list.
2. Contacted David Laughing Horse Robinson, Chairman of the Kawaiisu Tribe; added the Kawaiisu to the Fort Irwin Native American contact list.
3. Sent letters to all tribes on the contact list indicating specific information needed in order to complete comprehensive agreements (see Appendix I).
4. Communication with Nellis Air Force Base concerning their Native American consultation program has been initiated. Future communication is planned, and the feasibility of incorporating the particular aspects of their program recommended by the Native informants is being studied.
5. A field trip was conducted on 6 January 2004 for interested Native American representatives of cultural sites on Fort Irwin, NTC. Six representatives from four tribes participated. A report of this field visit is included in Appendix I.
6. Begun preparations for scheduling another consultation meeting in fall 2004.

Appendix A: Suggested Draft Comprehensive Agreement Between NTC-Fort Irwin and the Native American Tribes

COMPREHENSIVE AGREEMENT BETWEEN FORT IRWIN, NATIONAL TRAINING CENTER (NTC), CALIFORNIA AND *THE INDIAN TRIBE*

Regarding Inadvertent Discovery and Intentional Excavation of Native American Human Remains and Cultural Items over which the Indian Nations May Have Priority of Custody within Lands Owned and Controlled by the U.S. Army at Ft Irwin, NTC, California

WHEREAS, Ft Irwin, NTC, California, is responsible for the identification, protection, and disposition of Native American human remains and other cultural items on lands under its ownership and control pursuant to the Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601, 104 STAT. 3048, 25 USC 3001-3013; hereafter, NAGPRA) and 43 CFR 10, Native American Graves Protection and Repatriation Act Regulations; and

WHEREAS, Ft Irwin, NTC, must notify and consult with officials of culturally affiliated federally recognized American Indian Tribes concerning the discovery and eventual disposition of such cultural items, per 25 USC 3002 and 43 CFR 10.3 – 10.6; and

WHEREAS, *The Indian Tribe* is a federally recognized American Indian Tribe who traditionally occupied lands now in the state of California (including lands within Ft Irwin, NTC,); and

WHEREAS, *The Indian Tribe* does claim it is culturally affiliated with and does assert the right of possession and control over any Native American human remains and other cultural items from lands owned or controlled by Ft Irwin, NTC, in accordance with Section 3 (a)(2)(C)(1) of NAGPRA (25 USC 3002); and

WHEREAS, Ft Irwin, NTC, has the need to engage in activities including programs to maintain, rehabilitate, construct, and repair buildings, structures, roads, grounds, bridges, and associated landscaping; training, including, but not limited to, excavation, demolition, and maneuver of heavy equipment; and intentional excavation potentially required for compliance with Sections 106 or 110 of the National Historic Preservation Act, as amended (16 USC 470-470w) or permitted under the Archeological Resources Protection Act (16 USC 470aa-470mm); and

WHEREAS, these on-going activities may lead to the inadvertent discovery of Native American human remains and other cultural items; and

WHEREAS, Ft Irwin, NTC, lands are subject to natural processes that may over the course of time expose Native American human remains and other cultural items; and

WHEREAS, Section 11 of NAGPRA (25 USC 3009) and 43 CFR 10.5(f) permit and encourage specific agency-tribal agreements to ensure the appropriate treatment of Native American human remains and other cultural items;

NOW, THEREFORE, Ft Irwin, NTC, and *the Indian Tribe* agree that the following stipulations and procedures will be followed for the identification, notification, consultation, treatment, and disposition of all Native American human remains and other cultural items, that are inadvertently discovered or intentionally excavated on lands owned or controlled by Ft Irwin, NTC.

STIPULATIONS

- 1.0** Definitions for special terms used in this agreement, e.g., “human remains” and “cultural items”, are identical to those stated in NAGPRA, 43 CFR 10, and other federal preservation laws and regulations.

- 2.0** For notification purposes per 43 CFR 10.4(d)(1)(iii), Ft Irwin, NTC, considers *the Indian Tribe* likely to be culturally affiliated with inadvertently discovered NAGPRA human remains and other cultural items found on Ft Irwin, NTC.
- 3.0** Ft Irwin, NTC, consulted with *the Indian Tribe* to seek advice and counsel on treatment of Native American human remains and other cultural items in accordance with their traditions and compliance with NAGPRA. Consequently, Ft Irwin, NTC, will ensure the following measures are carried out.
- 4.0 Procedures for the Inadvertent Discovery of Native American Human Remains and Other Cultural Items [adapted from 43 CFR 10.4]**
- 4.1 Initial Notification**
Discoverer of bone material and/or other potential NAGPRA cultural items notifies Installation Cultural Resource Manager (CRM) immediately.
- 4.2 Initial Identification**
Installation CRM will make all efforts to visit the site within 24 hours of initial notification by the discoverer but this site visit will take place no later than three (3) working days after receipt of written notification. [43 CFR 10.4(d)(iii)]. If activities are occurring in the discovery area, the Installation CRM arranges for their cessation and the protection of the find until identification and follow-on steps are completed, as appropriate.
- 4.2.1** If bone material is present, the Installation CRM determines if the remains are human*
- 4.2.2** Installation CRM determines if the remains are recent (i.e., less than 50 years) and, in coordination with installation Security Forces (SF), if a crime scene is involved*
- 4.2.3** Installation CRM determines if the remains are Native American*

[* NOTE: Ft Irwin, NTC, shall arrange for a qualified professional, such as a forensic anthropologist, to be on call to perform in situ identifications in assistance to the CRM.]

4.3 Results of Initial Identification

The results of these identification procedures will determine whether NAGPRA provisions apply to the discovery situation. With regard to Native American human remains discovered on federal lands, NAGPRA and 43 CFR 10 make no distinction concerning their temporal context (i.e., recent or archeological in nature) or whether a potential crime scene exists. This agreement combines the affirmative provisions of NAGPRA concerning tribal consultation with conventional installation law enforcement mandates.

4.3.1 Result 1: Remains are non-human and no archeological resources are present.

4.3.2 Result 2: Recent human remains are present.

4.3.3 Result 3: Archeological, non-Native American human remains are present.

4.3.4 Result 4: Archeological, Native American human remains and/or other cultural items are present. Initiate NAGPRA notification procedures.

4.4 Notification, Consultation, Treatment, and Disposition Procedures

4.4.1 Result 1: Remains are non-human and no archeological resources are present.

Within three (3) working days of this determination, the Installation CRM notifies *the Indian Tribe* NAGPRA Coordinator via telephone or email that a reported inadvertent discovery of bone was non-human and that no cultural items or other archeological resources were present. After this notification, normal installation activities may resume in the area of discovery.

4.4.2 Result 2: Recent human remains are present

Installation CRM notifies installation Security Forces (SF), which assumes jurisdiction and responsibility. SF ensures that all installation activities cease within a 30-meter

radius of the site and declares the site off limits to everyone except authorized personnel. SF will investigate any potential criminal wrongdoing and carry the case to closure. Forensic examination of the remains will be conducted in accordance with local criminal investigative procedures. If indications are present that the remains are Native American, *the Indian Tribe* will be notified following appropriate next-of-kin notification. Final disposition of the remains will be arranged by the next-of-kin. Otherwise, final disposition of the remains will be arranged in accordance with 43 CFR 10.5-10.6.

4.4.3 Result 3: Archeological, non-Native American human remains are present

The Installation CRM takes measures to protect the discovery site, including entering the site into the Ft Irwin Cultural Resources Database (FICRD) and Integrated Cultural Resources Management Plan (ICRMP) and informing the California Office of Historic Preservation of the discovery. The Installation CRM shall notify *the Indian Tribe* NAGPRA Coordinator at least fifteen (15) days prior to moving any remains from the site. If remains are removed from the site, the Installation CRM will ensure their curation per the requirements of 36 CFR 79.

4.4.4 Result 4: Archeological, Native American human remains and/or other cultural items are present (INITIATE FORMAL NAGPRA COMPLIANCE PROCEDURES)

4.4.4.1 The Installation CRM shall immediately notify the Installation Commander or his/her official designee of the discovery, in writing. Installation CRM shall also notify Installation SF that NAGPRA compliance procedures are in effect per this agreement and 43 CFR 10.

4.4.4.2 The Installation CRM shall protect the site of the remains, stabilizing or covering as necessary. Neither Ft Irwin, NTC, nor *the Indian Tribe* shall

disclose information concerning the nature and location of the site outside of their respective governmental authorities. However, federally recognized tribes other than *the Indian Tribe*, which may have a claim of custody to these human remains and/or other cultural items, may be sent documentation under similar comprehensive agreements or upon written request to the Installation CRM.

4.4.4.3 No later than three (3) working days after receipt of written notification of discovery, the Installation Commander or his/her official designee shall certify notification has been received and will forward this certification to higher headquarters, Attn: IMI (Environmental Division).

4.4.4.4 Ft Irwin, NTC, shall notify the official *Indian Tribe* NAGPRA representative of any inadvertent discovery of Native American human remains or other cultural items on the installation as soon as possible, but no later than three (3) working days after the Installation Commander has received written notification of the discovery of Native American human remains and/or other cultural items. The Installation CRM will keep a list of official tribal contacts and update it annually.

4.4.4.5 The Installation CRM shall write a field evaluation of the circumstances of the discovery, condition, and contents of burials (including any artifacts). The evaluation should state the primary context, antiquity, and significance of human remains and other associated cultural items, if any. This evaluation will require the assistance of a professional archeologist and/or physical anthropologist.

4.4.4.6 The Installation CRM shall provide as soon as practicable in written form to the Installation

Commander or his/her official designee the results of the field evaluation, intended consultation tasks, and possible disposition of discovered remains. The Installation CRM shall also provide a copy of this field evaluation to *the Indian Tribe*.

4.4.4.7 The Installation CRM shall evaluate human remains and other associated cultural objects *in situ* unless eroded from their original location or removed by accident or looting. If *in situ* identification is not possible, the Installation CRM shall conduct consultation with *the Indian Tribe* and other culturally affiliated tribes to discuss further identification procedures, non-invasive methods of analysis or photography.

4.4.4.8 If the remains can be attributed to lineal descendants, the Installation CRM shall notify potential lineal descendants using the following procedures:

- Telephone and record in a phone log the date, time, and person contacted.
- Document the telephone conversation in a Memorandum for Record.
- Send written notification by certified mail to lineal descendant.
- Make follow-up phone calls to lineal descendants to determine if written notification of discovery was received by the appropriate person and to ascertain how she/he wishes to proceed in determining treatment and disposition of the human remains or other cultural items.

4.4.4.9 The Installation CRM shall ensure that final disposition of Native American human remains and/or other cultural items recovered under this part is carried out in accordance with the provisions in 43 CFR 10.6.

5.0 Intentional Excavation and Removal of Native American Human Remains and/or Other Cultural Items [adapted from 43 CFR 10.3]

- 5.1** If leaving Native American human remains and other cultural items *in situ* is determined, after consultation with lineal descendants, or *the Indian Tribe* and other culturally affiliated tribes, not prudent or feasible because erosion or activities in an area might damage them, excavation and removal shall be undertaken by Ft Irwin, NTC, in accordance with the requirements of the Archaeological Resources Protection Act (ARPA), the National Historic Preservation Act (NHPA), NAGPRA, and current professional standards for archeological data recovery. The Installation CRM shall arrange for the presence of an *Indian Tribe* representative during mitigation, if possible.
- 5.2** The Ft Irwin, CRM, may deem NRHP site evaluations necessary, based on archeological survey results and/or a mission need. The Installation CRM shall notify *the Indian Tribe* NAGPRA Coordinator, the Tribal Historic Preservation Officer and the California Office of Historic Preservation of this determination and the planned fieldwork. The Installation CRM shall arrange for the presence of an *Indian Tribe* representative during site evaluation work, if possible.
- 5.3** If Ft Irwin, NTC, proposes to undertake a planned activity that has a high probability to result in the discovery of Native American human remains and/or other cultural items, the Installation CRM shall notify the NAGPRA and Historic Preservation Office points of contact for *the Indian Tribe*. Ft Irwin, NTC, will then consult with the Indian Tribe, other culturally affiliated tribes, and other appropriate agencies to ensure that the work plan for such investigations meets all requirements of Federal and state laws and regulations. Concerns of *the Indian Tribe* regarding discovery, treatment, and disposition of human remains and/or other cultural items will also be discussed.
- 5.4** The Installation CRM shall provide written notification signed by the Commander or his/her designee to the Indian Tribe of planned excavations describing:

- Their location (including a map showing the area of potential effects and general site area).
- The basis for the determination that Native American human remains and/or other cultural items may be encountered.
- The basis for the determination of likely custody pursuant to 43 CFR 10.6.
- The proposed treatment and disposition of Native American human remains and other cultural items.
- The proposed time and place for meetings or consultation.

5.5 If no response is received from this written notification in 15 days, the Installation CRM shall make a follow-up telephone call to *the Indian Tribe*.

5.6 Consultation to establish provisions for the identification, treatment, and disposition of Native American human remains and other cultural items recovered by intentional excavations or inadvertent discovery must be conducted according to the provisions of 43 CFR 10.5 and documented by a written plan of action signed by the Installation Commander or his/her designee, which *the Indian Tribe* has the option to sign. In accordance with 43 CFR 10.5(e), the Action Plan will include:

- Any kinds of material to be considered as cultural items.
- Specific information used to determine custody pursuant to 43 CFR 10.6.
- Treatment, care, and handling of human remains and other cultural items.
- Planned archeological recording of human remains and other cultural items.
- Kinds of analyses planned for identification of human remains and other cultural items.
- Steps to be followed to contact tribal officials before any excavation.
- Steps to incorporate compliance with Section 106 of the National Historic Preservation Act and 36 CFR 800, as appropriate, including contact with California Office of Historic Preservation.
- Kind of traditional treatment to be afforded human remains or other cultural items.
- Nature of reports to be prepared.

- Disposition of human remains and other cultural items in accordance with 43 CFR 10.6.
- Possible involvement of a Indian representative during excavation.
- Issuance of a permit pursuant to ARPA and 32 CFR 229, if applicable.

5.7 For any Native American human remains and/or other cultural items that are removed from the site of their discovery, Ft Irwin, NTC, will ensure their temporary storage in a repository meeting the curation standards described in 36 CFR 79, until their final disposition is determined through consultation with lineal descendants, *the Indian Tribe*, or other culturally affiliated tribes. Ft Irwin, NTC, within limits established by Federal laws and regulation, and in consultation with *the Indian Tribe*, shall accommodate Indian tribal customs and traditions when removing, analyzing, handling, and storing Native American human remains and other cultural items over which *the Indian Tribe* may have claim of priority of custody.

6.0 Consultation Procedures

- 6.1 *The Indian Tribe* will provide Ft Irwin, NTC, with the names, telephone numbers, and addresses of the Executive Council Chairperson, the Tribal NAGPRA Representative, and the Tribal Historic Preservation Officer and notify the installation when tribal Officers and/or contact information change.
- 6.2 *The Indian Tribe* may contact the Installation CRM to request information on cultural resources management activities at the installation.
- 6.3 If a meeting is needed between *the Indian Tribe* tribal representatives and Ft Irwin, NTC, to discuss cultural resources and related issues, Ft Irwin, NTC, will schedule a meeting at a mutually convenient time and place. Within budgetary constraints, Ft Irwin, NTC, will assist with travel expenses incurred by tribal representatives traveling to Ft Irwin, NTC, for purposes of implementing this agreement. Nothing in this agreement shall be interpreted or construed as a commitment or

requirement that Ft Irwin, NTC, obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1342, or any other applicable provision of law.

- 6.4 If federally recognized tribes other than *the Indian Tribe* claim affiliation with any Native American human remains and/or other cultural items from Ft Irwin, NTC, the installation shall follow dispute resolution procedures as stated in NAGPRA and 43 CFR 10.17, as required.
- 6.5 Either signatory may terminate their participation in this MOA* upon 30 days written notice to the other signatory, provided that the parties consult prior to termination to seek agreement on amendments or other actions that would avoid termination.
- 6.6 Nothing in this MOA shall prevent the governing body of *the Indian Tribe* from relinquishing control over any Native American human remains, or title to or control over any funerary object or sacred object recovered from Ft Irwin, NTC.

This agreement shall become effective upon the signature of both authorized parties.

Chairperson, Indian Tribe Date

Commander, Ft Irwin, NTC Date

* The term "MOA" (memorandum of agreement) is an error that was not detected before sending this document to the tribes. The term "comprehensive agreement" should have been used.

Appendix B: NAGPRA Standard Operating Procedures

DRAFT

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT STANDARD OPERATING PROCEDURES FOR THE NATIONAL TRAINING CENTER (NTC), FORT IRWIN, CA

Inadvertent Discovery of Native American Human remains and Associated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

[Reference: Native American Graves Protection and Repatriation Act 25 U.S.C. Sec. 3002-3013, 43 C.F.R. 10]

I. INTRODUCTION

Fort Irwin, NTC, is engaged in a continuing archaeological survey and inventory of the cultural resources within its boundaries. As inventory is an ongoing process, areas may remain on the installation where ground-disturbing activity has the potential for uncovering unreported archaeological deposits, which may contain burials. In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), such human remains and cultural objects must be identified, if possible, as to lineal descendants or culturally affiliated contemporary tribes, treated in a manner deemed appropriate by the lineal descendants or culturally affiliated tribes, and repatriated if claims are justified by a preponderance of evidence.

This document outlines procedures to be followed in the event of an inadvertent discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony and dealing with the treatment and disposition of Native American human remains and cultural objects. This SOP (Standard Operating Pro-

cedure) is an internal document only. As such it is intended solely to improve the internal workings of the Fort Irwin, NTC, staff, and does not in any way create any right or cause of action to any party.

II. DEFINITIONS

1. Burial site means “any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of grave site” [43 C.F.R. 10.2(d)(2)].

2. Cultural affiliation means “that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe and an identifiable earlier group” [43 C.F.R. 10.2(e)].

3. Funerary objects means “items that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or as being related to specific individuals or families or to known human remains” [43 C.F.R. 10.2(d)(2)].

4. Sacred objects means “items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony” [43 C.F.R. 10.2(d)(3)].

5. Objects of cultural patrimony means “items having ongoing historical, traditional, or cultural importance central to the Indian tribe rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been consid-

ered inalienable by the culturally affiliated Indian tribe at the time the object was separated from the group” [43 C.F.R. 10.2(d)(4)].

6. Indian tribe means “any tribe, band, nation, or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians” [43 C.F.R. 10.2(b)(2)].

7. Inadvertent discovery means “the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3(d)” of NAGPRA [43 C.F.R. 10.2(g)(4)]. According to this definition, if an object is recovered that is not recognized as defined under NAGPRA when found, but is subsequently identified during laboratory analysis, this qualifies as “detection” and therefore constitutes inadvertent discovery.

8. For the purposes of this section, the term “cultural objects” specifically refers to funerary objects, sacred objects, and objects of cultural patrimony.

III. POLICY

The intent of NAGPRA is to protect, identify proper ownership, and to ensure the rightful disposition of Native American human remains and cultural objects that are discovered on federal or tribal lands. NAGPRA requires that certain procedures be followed when there is inadvertent discovery of Native American human remains and cultural objects. In the event of a discovery of Native American human remains or cultural objects, the installation commander will ensure compliance with NAGPRA [25 U.S.C. 3001-3013, 43 C.F.R. 10] and any applicable statutory and regulatory requirements of the American Indian Religious Freedom Act [42 U.S.C. 1996-1996a], Archaeological Resources Protection Act [16 U.S.C. 470aa-470ll], National Environmental Policy Act [42 U.S.C. 4321-4370c], and National Historic Preservation Act [16 U.S.C. 470-470w] as well as White House Memorandum, 29 April 1994. Each statute mandates compliance with independent requirements. Compliance with one statutory requirement therefore may not satisfy other applicable requirements.

The Fort Irwin, NTC, Cultural Resources Manager will coordinate with the Staff Judge Advocate (SJA), Criminal Investigation Directorate (CID), Provost Marshal’s

Office (PMO), Directorate of Training (G3), Operations Group 11th Armored Cavalry Regiment (ACR), Range Control, Master Planning, and Department of Public Works (DPW) to ensure that the Cultural Resources Manager (1) is included in the planning of training and construction to assess the potential for the discovery of Native American burials and archaeological sites, and (2) is identified as the point-of-contact to be notified immediately if a Native American burial or archaeological site is inadvertently discovered on installation property.

In addition to ground disturbing activities such as training operations, construction, and archaeological excavations, erosion by wind or water may result in the discovery of human remains and cultural objects. If Native American remains and cultural objects are discovered, any work within a 50-meter radius of the site shall be halted and the Fort Irwin, NTC, Cultural Resources Manager (telephone number 760-380-3740) shall be notified immediately. The site will be protected and stabilized. Any removal of material is prohibited and constitutes a violation of NAGPRA and the Archaeological Resources Protection Act (ARPA). The Natural and Cultural Resources Manager, in consultation with qualified professionals as necessary, will initially evaluate the site and report the finding to the installation commander and the potentially culturally affiliated Indian tribes, the State Historic Preservation Officer, and the County Sheriff when appropriate. Any subsequent treatment of the remains and objects or stabilization of the site will be carried out only after consultation with the potentially affiliated tribes.

IV. PROCEDURE

[Reference: NAGPRA 25 U.S.C. 3002, 43 C.F.R. 10]

IV.A. PRELIMINARY ASSESSMENT, PROTECTION, AND VERIFICATION

1. When notified of the possible inadvertent discovery of buried human remains or cultural objects, the Fort Irwin, NTC, Cultural Resources Manager will make all efforts to visit the site within twenty-four (24) hours of initial notification by the discoverer of the human remains or cultural objects, but this site visit will take place no later than three (3) working days after receipt of written notification. [43 CFR 10.4(d)(iii)]. If activities are occurring in the discovery area, the Installation CRM arranges for their cessation and the protection of the find until identification and follow-on steps are completed, as appropriate.

2. If, upon examination, the remains are identified as non-human, the Fort Irwin, NTC, Cultural Resources Manager will determine if archaeological contexts are present that need to be evaluated pursuant to Section 106 [36 C.F.R. 800] of the National Historic Preservation Act [16 U.S.C. 470-470w].
3. If, upon examination, the remains appear to be human and associated with a crime scene of 50 years old or less, the Fort Irwin, NTC, Cultural Resources Manager will notify the Provost Marshal's Office (PMO) and the Criminal Investigation Division (CID) on post and the County Sheriff's Department. All activities will cease within the area of the inadvertent discovery. The site will be protected and declared off limits to everyone except authorized personnel. The area of protection should cover no less than a 50-meter radius around the site. The CID will assume custody of the remains and notify the proper authorities.
4. If, upon examination, the remains appear to be human, but are not associated with a crime scene, or if all law enforcement officials contacted have determined that the remains will not be involved in a legal investigation, contact the State Historic Preservation Officer (SHPO). The site will be entered into the Fort Irwin Cultural Resources Database (FICRD) and Integrated Cultural Resources Management Plan (ICRMP). This procedure applies whether or not the remains are Native American.
5. If after consultation with the SHPO, the remains are determined to be Native American and not associated with a crime, the Fort Irwin, NTC, Cultural Resources Manager must make a written field evaluation of the circumstances of the discovery, the condition and contents of the burial, including any artifacts, the primary context of the remains and any artifacts, and their antiquity and significance. The human remains and cultural objects will be evaluated in situ. Destructive analysis is prohibited. If an in situ identification of the remains cannot be made, the potential culturally affiliated tribes will be consulted pursuant to 43 C.F.R. 10.3(b) and further identification procedures will be discussed.

The Fort Irwin, NTC, Cultural Resources Manager may consult with the CID or a qualified physical or forensic anthropologist if necessary. The site will be protected according to standard installation practice for archaeological discoveries. Stabilization or covering may be employed if necessary. Removal of material shall not resume until compliance with these rules regarding resumption of activity is completed.

6. Additionally, if the remains are determined to be Native American and not associated with a crime, the Fort Irwin, NTC, Cultural Resources Manager will immediately upon such determination notify the installation commander or his/her official designee of the discovery in writing and by telephone. No later than three (3) working days after receipt of written notification of discovery, the installation commander or his/her official designee will certify that notification has been received and will forward this certification to higher headquarters, Attn: Installation Management Agency (IMA), Southwest Region, Environmental Division.

7. Note that a preliminary assessment of whether NAGPRA applies to a discovery of human remains may take considerable time and coordination with qualified professionals. Therefore, the Fort Irwin, NTC, Cultural Resources Manager should make arrangements with qualified professionals, such as physical or forensic anthropologists, who are willing to aid in situ identifications before an inadvertent discovery of human remains occurs.

IV.B. NOTIFICATION OF THE RESPONSIBLE FEDERAL AGENCY OFFICIAL (INSTALLATION COMMANDER) [43 C.F.R. 10.4]

1. When the Fort Irwin, NTC, Cultural Resources Manager receives notification of an inadvertent discovery of Native American human remains and cultural objects, immediate telephone and email notification must be provided to the installation commander or his/her official designee. This telephone and email notification will be followed immediately by written notification that contains the results of the field evaluation and a plan of action to inform the commander of the intended consultation tasks and disposition of the discovered objects.

2. No later than 48 hours after receipt of written confirmation from the Fort Irwin, NTC, Cultural Resources Manager, the installation commander or his/her official designee will forward to the Cultural Resources Manager the certification that the Memorandum of Notification has been received.

3. All contracts that require any type of excavation on installation lands will include the requirement to notify the Fort Irwin, NTC, Cultural Resources Manager immediately upon discovery of human remains or cultural objects. Directorate of Training (G3) and Range Control will be provided guidance to notify the Cultural Resources Manager immediately upon discovery of human remains or cultural objects.

IV.C. NOTIFICATION OF NATIVE AMERICANS

1. The Fort Irwin, NTC, Cultural Resources Manager will notify potential culturally affiliated tribes using the following procedures:

- a. No later than three working days after receipt of written notification by the installation commander of the discovery of Native American human remains and/or cultural objects, the Fort Irwin, NTC, Cultural Resources Manager shall notify possible lineal descendants and Indian tribes who may potentially claim custody of remains and cultural objects. Notification shall occur (1) by telephone and (2) by written notification that includes the Memorandum of Notification of the Installation Commander, signed by the installation commander.
- b. Telephone notification, the date, time, and person contacted, will be recorded in a phone log and the conversation documented in a Memorandum for Record.
- c. Notices will be sent by certified mail to the official NAGPRA contact person designated by the tribe. If the official NAGPRA contact person is the tribal chairperson, the letter will be sent to him/her via certified mail and a copy furnished to the NAGPRA coordinator.
- d. Follow-up phone calls will be made to the NAGPRA coordinators of the Indian tribes contacted to determine if written notification of the discovery was received by the appropriate person and to ascertain how the tribe wishes to proceed in determining cultural affiliation, treatment, and disposition of the human remains or cultural objects.

2. Decisions on which tribes to notify will be based on order of priority of ownership described in 25 U.S.C. 3002, Sec. 3(2) and 43 C.F.R. 10.6 and the List of Tribal Contacts maintained by the Fort Irwin, NTC, Cultural Resources Manager.

3. Priority of ownership or control of Native American human remains and cultural objects is briefly: [For details, see 25 U.S.C. 3002(a), 43 C.F.R. 10.6]

- a. Lineal descendants, as determined pursuant to 43 C.F.R. 10.14(b),
- b. Indian tribe holding tribal lands as defined in 43 C.F.R. 10.2(f)(2),

- c. Culturally affiliated Indian tribe as defined in 43 C.F.R. 10.14,
 - d. Indian tribe recognized as the aboriginal owners of the land by a final judgment of the Indian Claims Commission or the United States Court of Claims,
 - e. Indian tribes aboriginally occupying the land,
 - f. Indian tribe with the strongest demonstrated cultural relationship,
 - g. Unclaimed.
4. The List of Tribal Contacts will be kept by the Fort Irwin, NTC, Cultural Resources Manager and will be verified and/or updated annually in coordination with tribal election schedules.

IV.D. IDENTIFICATION OF NATIVE AMERICAN HUMAN REMAINS

1. Identification of Native American human remains and cultural objects will be made *in situ* unless they have already eroded from their original location or have been removed from their original resting place by accident or as a result of looting. If an *in situ* identification of the remains cannot be made, the potential culturally affiliated tribes will be consulted pursuant to 43 C.F.R. 10.3(b) and further identification procedures will be discussed.

2. If necessary, the Fort Irwin, NTC, Cultural Resources Manager will coordinate the identification of Native American human remains and cultural objects with qualified archaeologists, forensic or physical anthropologists, or cultural anthropologists who will record their recommendations and all data necessary to make the identification, including any additional information that can contribute to the determination of lineal descendants or cultural affiliation. The Fort Irwin, NTC, Cultural Resources Manager may use recommendations of experts along with any additional comparative physical anthropological data and archaeological, ethnographic, and historical information to determine lineal descendants or Indian tribes that have the closest affiliation according to priority of ownership as defined in 25 U.S.C. 3002(a) and 43 C.F.R. 10.6.

3. Cultural affiliation is determined by a preponderance of evidence based on geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion [25 U.S.C.

3005(a)(4), 43 C.F.R. 10.14(e) and (f)]. Criteria for determining cultural affiliation are listed in 43 C.F.R. 10.14(c). Regulations caution that a finding of cultural affiliation based on a preponderance of evidence should take into consideration “the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record” [43 C.F.R. 10.14(d)]. Cultural affiliation does not have to be established by the claimants with scientific certainty [43 C.F.R. 10.14(f)].

4. Preliminary determination of lineal descendants or closest affiliation will be sent to the previously notified tribes for review. The tribes may have additional information to contribute to the identification of lineal descendants or cultural affiliation. Representatives of tribes may decide to visit the site to verify the identification. A list of all Indian tribes consulted regarding the particular human remains and cultural items will also be provided to each consulting tribe.

5. Consultation must result in a written plan of action in accordance with 43 C.F.R. 10.5(e)] or Comprehensive Agreement (CA) in accordance with 43 C.F.R. 10.5(f) between the appropriate tribes and the installation commander or his/her designee. Development, review, and signature of the CA follow Army protocol specified in AR 200-4. The Fort Irwin, NTC, Cultural Resources Manager, acting on behalf of the installation commander, may prepare the written plan of action or CA. The installation commander approves and signs all NAGPRA documents. Copies of the written plan of action are provided to the consulting lineal descendants and Indian tribes. Parties covered in a CA must agree to be signatories.

6. Information to be gained during the consultation that should be included in the written Action Plan or Comprehensive Agreement (CA):

- a. Kinds of material to be considered as cultural objects as defined 43 C.F.R. 10.2(d);
- b. Specific information used to determine custody pursuant to 43 C.F. R. 10.6;
- c. Treatment, care, and handling of human remains and cultural objects;
- d. Planned archaeological recording of the human remains and cultural objects;
- e. Kinds of analyses for identification of human remains and cultural objects;

- f. Procedure for contacting Indian Tribe officials before (1) any excavation and (2) at the time of any inadvertent discovery of human remains or cultural objects;
- g. Steps to incorporate compliance with Section 106 of the National Historic Preservation Act and 36 CFR 800, as appropriate, including contact with California Office of Historic Preservation;
- h. Kind of traditional treatment to be afforded the human remains or other cultural objects;
- i. Nature of the reports to be prepared;
- j. Disposition of human remains and other cultural items in accordance with 43 CFR 10.6;
- k. Possible involvement of a Indian representative during excavation; and
- l. Issuance of a permit pursuant to ARPA and 32 CFR 229, if applicable.

IV.E. INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND/OR OTHER CULTURAL ITEMS [adapted from 43 CFR 10.3]

1. If leaving Native American human remains and other cultural items *in situ* is determined, after consultation with lineal descendents or culturally affiliated Tribes, not prudent or feasible because erosion or activities in an area might damage them, excavation and removal shall be undertaken by Ft Irwin, NTC, in accordance with the requirements of the National Historic Preservation Act (NHPA), NAGPRA, and current professional standards for archeological data recovery. The Fort Irwin, NTC, Cultural Resource Manager will arrange for the presence of an Indian Tribe representative during mitigation, if possible.

2. The Ft Irwin, CRM, may deem NRHP (National Register of Historic Places) site evaluations necessary, based on archeological survey results and/or a mission need. The Fort Irwin, NTC, Cultural Resource Manager shall notify the Indian Tribes' NAGPRA Coordinators, the Tribal Historic Preservation Officer and the California Office of Historic Preservation of this determination and the planned fieldwork. The Fort Irwin, NTC, Cultural Resource Manager will arrange for the presence of an Indian Tribe representative during site evaluation work, if possible.

IV.F. TREATMENT AND DISPOSITION

1. The treatment and disposition of any Native American human remains and cultural objects recovered inadvertently from Fort Irwin, NTC, lands shall be determined in consultation with lineal descendants or Indian tribes that can demonstrate priority of ownership as outlined in NAGPRA.

2. A tribe that wishes to make a claim of ownership of human remains or cultural objects must be able to demonstrate an affiliation by a preponderance of evidence according to the criteria for the priority of custody specified in 25 U.S.C. 3002 and 43 C.F.R. 10.6. Guidelines for determining the preponderance of evidence are found in 43 C.F.R. 10.14.

3. If a single, legitimate claimant cannot be identified, continue consultation with the previously consulted tribes to consider possible alternatives for affiliation, treatment, and disposition. Notify Forces Command (FORSCOM) regarding the details of the case. Fort Irwin, NTC, must retain the material in a safe and secure manner agreeable to the consulting parties as required by 43 C.F.R. 10.6(c) and 10.15 until a plan for the treatment and disposition of the Native American human remains and cultural objects pursuant to 43 C.F.R. 10 can be specified.

For any Native American human remains and/or other cultural items that are removed from the site of their discovery, Ft Irwin, NTC, will ensure their temporary storage in a repository meeting the curation standards described in 36 CFR 79, until their final disposition is determined through consultation with lineal descendants, the Indian Tribe, or other culturally affiliated tribes. Ft Irwin, NTC, within limits established by Federal laws and regulation, and in consultation with the Indian Tribe, shall accommodate Indian tribal customs and traditions when removing, analyzing, handling, and storing Native American human remains and other cultural items over which the Indian Tribe may have claim of priority of custody.

4. If no agreement can be reached, refer to dispute resolution below.

5. For inadvertent discoveries of Native American human remains and cultural objects, endeavor to specify treatment within thirty (30) days after the certification of notification has been issued.

6. If it is determined by the consulting parties that the *in situ* restoration of a burial site is not feasible, the contents of the burial shall, upon the identification of the lineal descendants or tribe(s) determined to be culturally affiliated, be repatriated

to the lineal descendants or appropriate tribe/s, if a legitimate claim is made. Procedures for repatriation will be made in consultation with the appropriate descendants and/or tribe/s pursuant to 43 C.F.R. 10.6.

7. Each restoration and re-interment shall require that Fort Irwin provide an opportunity for appropriate tribal religious ceremony or ceremonies pursuant to the American Indian Religious Freedom Act (AIRFA) [42 U.S.C. 1996-1996a] and Executive Order 13007.

8. Following 43 C.F.R. 10.6(c), prior to the disposition of human remains and cultural objects, the installation commander or his/her official designee must publish notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains and cultural objects were discovered and in which the lineal descendants or affiliated Indian tribe/s currently reside.

- a. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The consulting tribes may review the content of the notice before its publication. Privileged information should not be included in the notice.
- b. The notices must be published twice at least a week apart. A copy of the notice and information on when and in what newspaper/s the notice was published must be sent to the Departmental Consulting Archaeologist, Archaeological Assistance Division, National Park Service.
- c. The return of human remains and cultural objects must not take place until at least thirty days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the installation commander or his/her designee cannot clearly determine which claimant is entitled to custody, the federal agency must not transfer custody of the human remains and cultural objects until the proper recipient is determined pursuant to 43 C.F.R. 10.

9. If a claim is made for human remains and cultural objects, all of the tribes that were involved in the consultations regarding their disposition will be notified.

10. Unclaimed Native American human remains and cultural objects shall be returned in accordance with the regulations developed by the NAGPRA Review Committee.

11. The Fort Irwin, NTC, Cultural Resources Manager shall ensure that final disposition of Native American human remains and/or other cultural items recovered under this part is carried out in accordance with the provisions in 43 CFR 10.6.

IV.G. TIME CONFLICTS

1. On those rare occasions when Fort Irwin or the tribe(s) is/are unable to meet its commitments pertaining to time schedules for any activity specified herein, the party that is unable to meet the schedule will notify the other party as soon as physically possible to reschedule the activities to the mutual satisfaction of both parties. Emergency actions will be coordinated by telephone or FAX.

V. DISPUTE RESOLUTION

1. All disputes regarding the cultural affiliation of discovered human remains and/or cultural objects shall be resolved in accordance with Sections 3 and 7(e) of NAGPRA and the implementing regulations 43 C.F.R. 10.

2. Fort Irwin shall follow the procedures set forth in this document regarding consultation with the interested tribes. Should any interested tribe make a conflicting claim of cultural affiliation or dispute the methods of treatment or disposition of human remains and/or cultural objects as delineated herein, the installation commander shall notify Installation Management Agency (IMA), Southwest Region, Fort Sam Houston.

3. Fort Irwin will continue consultation with the disputing parties, suggest that the disputing parties seek resolution among themselves, and, if the disputing parties concur, go before the NAGPRA Review Committee which is given the authority under 25 U.S.C 3006(c)(4) and 43 C.F.R. 10.16 and 10.17 to make recommendations on the resolution of disputes.

4. If, upon receipt of the recommendations of the Review Committee, the most appropriate claimant still cannot be determined, Fort Irwin shall retain the disputed

remains or cultural objects until the question of custody is resolved, as stated in 43 C.F.R. 10.15(a)(2).

VI. ADDITIONAL PARTIES

1. Interested tribes claiming lineal descent or cultural affiliation may join these procedures at any time should they express a desire to do so.
2. However, in accordance with 43 C.F.R. 10.15 (a)(1), if an interested party fails to make a written claim prior to the time human remains and cultural objects are duly repatriated or disposed of to a claimant in accordance with 43 C.F.R. 10, the interested party is deemed to have irrevocably waived any right to claim such items pursuant to these regulations.

VII. RESUMPTION OF ACTIVITY

1. 43 C.F.R. 10.4(d)(2) specifies:
 - a. The activity that resulted in the inadvertent discovery of Native American human remains or cultural objects may resume thirty (30) days after certification by the installation commander of the receipt of the notification sent by the Fort Irwin, NTC, Cultural Resources Manager, if otherwise lawful. Any impacts to the site must be evaluated pursuant to Section 106 [36 C.F.R. 800] of the National Historic Preservation Act [16 U.S.C. 470-470w]. Environment consideration under the National Environmental Policy Act (NEPA) may be required prior to continuing the activity. This may be a supplement to the NEPA analysis which was done prior to initiating the activity, and should consider the effect of the activity on the “find” in question, as well as the effect, if any, on any other “finds” in the vicinity. Removal or excavation of Native American human remains and cultural objects must also be carried out in accordance with 43 C.F.R. 10.3.
 - b. Or, activity may resume if the treatment is documented in a written binding agreement between the installation and the affiliated Indian tribes that follows 43 C.F.R. 10.3 and 43 C.F.R. 10.6.

- c. In no event may activity resume until the SHPO or, if involved, local law enforcement officials approve.

REFERENCES

FEDERAL STATUTES

1. American Indian Religious Freedom Act of 1978, as amended, 42 U.S.C. 1996-1996a
2. Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa-470ll
3. Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. 3001-3013
4. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4370c
5. National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w

FEDERAL REGULATIONS

1. 32 C.F.R. 229, Protection of Archaeological Resources
2. 36 C.F.R. 60, National Register of Historic Places
3. 36 C.F.R. 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places
4. 36 C.F.R. 78, Waiver of Federal Agency Responsibility under Section 110 of the National Historic Preservation Act
5. 36 C.F.R. 800, Protection of Historic Properties
6. 40 C.F.R. 1500-1508, Regulations Implementing the National Environmental Policy Act
7. 43 C.F.R. 7, Protection of Archaeological Resources

8. 43 C.F.R. 10, Native American Graves Protection and Repatriation Act Regulations

EXECUTIVE ORDERS

1. E.O. 11593, Protection and Enhancement of the Cultural Environment
2. E.O. 13007, Indian Sacred Sites
3. E.O. 13084, Consultation and Coordination with Indian Tribal Governments

PRESIDENTIAL MEMORANDA

1. White House Memorandum, Government-to-Government Relations with Native American Tribal Governments, April 29, 1994

Appendix C: Power Point Presentations



Ft. Irwin, NTC – Native American Tribal Meeting 2-4 October 2003 Ft. Mojave AVI Resort Laughlin, NV Agenda	
2 October 2003	1 October 2003
1:00 p.m. Begin meeting at AVI Resort	9:00 a.m. Resume meeting
o Welcome – Ft Mojave Indian Tribe	o Welcome – Ft Mojave Indian Tribe
o Opening Remarks – Deputy Commander and Chief of Staff, Col. Edward L. Flinn	o Opening Remarks – Col. Flinn
o Pledge of Allegiance	o Pledge of Allegiance
o Native American Prayer	o Native American Prayer
o Group Introductions	
1:30 p.m. Topics for Discussion – Col. Flinn	9:15 a.m. NTC Cultural Resources Program
1. NAGPRA Comprehensive Agreements	o Land Expansion Results – Mr. Tad Britt
2. Programmatic Agreements	o Cultural Affiliation Study – Mr. Tad Britt
3. NTC Cultural Resources Program	
4. Listening Session	10:15 – 10:30 a.m. BREAK
1:45 p.m. NAGPRA Comprehensive Agreement Presentation – Mr. Tad Britt	10:30 a.m. NTC Cultural Resources Program (Continued)
2:00 p.m. NAGPRA Comprehensive Agreement – Open Discussion	o Fiber Optic Network – Mr. Mickey Quillman and Mr. Tad Britt
2:45 – 3:00 p.m. BREAK	o Railroad Spur – Mr. Mickey Quillman and Mr. Tad Britt
3:00 p.m. Programmatic Agreements Presentation – Mr. Paige Peyton	11:30 – 1:00 p.m. LUNCH
4:00 p.m. Listening Session	1:00 p.m. Listening Session
4:30 p.m. Conclude Formal Meeting for the day	3:00 – 3:30 p.m. BREAK
6:30 p.m. Ft Mojave Hosted Social Event	3:30 p.m. (Continue) Listening Session
	4:30 p.m. Conclude for the day
	4 October 2003 Cultural Site Visits
	9:00 a.m. Meet at AVI hotel lobby for cultural sites visit. Transportation will be provided. Water, soft drinks and snacks will be provided.
	12:00 p.m. Return to AVI Resort and conclude meeting. Instructions and assistance of completing Travel Vouchers will be provided to ensure prompt reimbursement for any out of pocket expenses.

Standard Operating Procedures and Programmatic Agreements

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

Inadvertent Discovery of Native American Human Remains and Associated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

STANDARD OPERATING PROCEDURES and COMPREHENSIVE AGREEMENTS

Legislative Drivers for Consultation

National Environmental Policy Act

Native American Graves Protection and Repatriation Act

National Historic Preservation Act

American Indian Religious Freedom Act

Archaeological Resources Protection Act

Presidential Memorandum, 1994, Government to Government Relations

EO 13007, Access to Sacred Sites

EO 13084, Consultation and Coordination with Indian Tribal Governments

EO 12898, Environmental Justice

DoD American Indian and Alaska Native Policy

AR 200-4

DA PAM 200-4

Federally Recognized Tribes Invited to Participate

- Colorado River Indians
- Fort Mojave Indian Tribe
- Chemehuevi Tribal Council
- San Manuel Band of Mission Indians
- Timbi-sha-Shoshone Tribe
- Moapa Band of Paiute Indians
- Twenty-Nine Palms Band of Mission Indians
- Bishop Paiute Tribe
- Morongo Band of Mission Indians
- Big Pine Paiute Tribe of Owens Valley
- Lone Pine Paiute Shoshone Tribe
- Fort Independence Community of Paiute
- Kaibab Band of Paiute Indians
- Las Vegas Tribe of Paiute Indians

NAGPRA CA and SOP Outline:

- Introduction
- Definitions
- Policy/Procedures
- Notifications
- Identifications
- Treatment and Disposition
- Time Conflicts/Dispute Resolution
- Additional Parties
- Resumption of Activity

DRAFT NAGPRA- CA and SOP

Inadvertent Discovery of Native American Human Remains and Associated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

- Ft Irwin is engaged in a continuing cultural resource inventory and evaluation of their holdings.
- The training mission of Ft Irwin has the potential to uncover previously unidentified archeological/cultural deposits and possibly Native American burials
- If human remains or funerary items are discovered, compliance with NAGPRA is required
 - Lineal descent
 - Cultural affiliation
 - Repatriation

Definitions:

- Burial Site
- Cultural Affiliation
- Funerary Object
- Sacred Object
- Object of Cultural Patrimony
- Indian Tribe
- Inadvertent Discovery
- Cultural Objects

Policy

- To Protect
- To Identify Proper Ownership
- To Ensure Rightful Treatment and Disposition

Procedures:

Preliminary Assessment, Protection and Verification

- CRM must make a site visit within 24 hours of discovery
 - If non-human, determine archeological association and whether or not Section 106 procedures apply
 - Determine if remains are associated with a recent crime scene
 - If so, contact Installation PMO/CID and County Sheriff, activity will cease w/in 50 m radius and CID takes lead as investigating party
 - If not associated w/ crime scene w/ authorities concurring, notify CA SHPO

Procedures:

Preliminary Assessment, Protection and Verification

- Continued:
 - Are they Native American? If so, CRM will prepare a report of finding, noting all circumstances including content and context of the discovery, their antiquity and significance.
 - Evaluations will be conducted *in situ*.
 - Destructive analysis is prohibited.
 - CRM/CID will consult with forensic/physical anthropologists as appropriate.
 - Site will be protected, stabilized and monitored
 - No removal of items until compliance with these rules regarding resumption of activity is completed.
 - NAGPRA investigations take time and CRM/CID should have a Plan of Action including specialist identified and available to conduct field analysis.

Notification of Installation Commander

- Immediate telephone notification to Commander or designee.
- Immediately followed by written report, which contains results of field evaluation and Plan of Action--consultation tasks and disposition of discovered objects
- Commander will notify CRM that the Memorandum of Notification has been received within 48 hours
- All contracts that involve any ground disturbance activities will be required to notify the CRM immediately should an inadvertent discovery be made
- G3 and Range Control shall have procedures in place to notify the CRM should an inadvertent discovery occur

Notification of Native Americans

- The Installation Commander has three (3) working days after written receipt of an inadvertent discovery of Native American remains or funerary items to notify all possible lineal descendants and other Indian tribes that may claim custody of the objects.
- Decisions on which tribes to notify will be based on priority of ownership described in 25 U.S.C. 3002 and 43 C.F.R. 10.6 and the List of Tribal Contacts.
 - Telephone calls shall be logged
 - Certified mail including written reports

Notification of Native Americans Continued

- Priority of ownership or control of Native American human remains and cultural objects is briefly:
 - Lineal descendants, as determined pursuant to 43 C.F.R. 10.14(b)
 - Indian tribe holding tribal lands as defined in 43 C.F.R. 10.2(f)(2)
 - Culturally affiliated Indian tribe as defined in 43 C.F.R. 10.14
 - Indian tribe recognized as the aboriginal owners of the land by a final judgment of the Indian Claims Commission or the United States Court of Claims
 - Indian tribe with the strongest demonstrated cultural relationship
 - Unclaimed
- The List of Tribal Contacts will be kept by the Natural and Cultural Resources Manager and will be verified and/or updated annually in coordination with tribal election schedules.

Identification of Native American Human Remains

- *In situ* analysis is the preferred method. If not consultation shall occur and further identification methods discussed
- CRM will employ specialist as appropriate (e.g., forensic, physical anthropologists, ethnographers, tribal consultants)
- Cultural affiliation shall be determined by a preponderance of evidence (e.g., geography, kinship, biological, archeological, folklore, etc.)
- Lineal descent will be determined with potential lineal descendants

Identification of Native American Human Remains: continued

- Consultation must result in either a Plan of Action and/or a Comprehensive Agreement. Parties covered in a CA must agree to be signatories.
- Information to be gained during the consultation that should be included in the written plan of action or CA:
 - Kinds of material to be considered as cultural objects
 - Specific information used to determine custody
 - Treatment, care, and handling of human remains and cultural objects;
 - Archaeological recording of the human remains and cultural objects;
 - Kinds of analysis for identification of human remains and cultural objects;
 - Steps to be followed to contact Indian Tribe officials at the time of an inadvertent discovery of human remains or cultural objects;
 - Kind of traditional treatment to be afforded the human remains or cultural objects;
 - Nature of the reports to be prepared, and
 - Disposition of human remains and cultural objects

Treatment and Disposition

- Treatment and disposition shall be determined in consultation with lineal descendants or Tribes that demonstrate priority of ownership, per NAGPRA
- Tribes must demonstrate affiliation by a preponderance of evidence
- If a single claimant can not be identified, continue consultation.
- If no agreement can be reached refer to dispute resolution procedures below
- Make every attempt to specify treatment for inadvertent discoveries within thirty (30) days after certified notification has been sent.
- If *in situ* preservation is not possible, repatriation with tribes of lineal descent of cultural affiliation should be undertaken

Treatment and Disposition Continued

- Each restoration or re-interment shall require Ft Irwin an opportunity for tribal religious participation, as per AIRFA
- Prior to the disposition of NAGPRA objects public notices shall be published of the proposed disposition in the area of lineal and culturally affiliated tribes
 - The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The consulting tribes may review the content of the notice before its publication. Privileged information should not be included in the notice.
 - The notices must be published twice at least a week apart. A copy of the notice and information on when and in what newspaper/s the notice was published must be sent to the Departmental Consulting Archaeologist, Archaeological Assistance Division, National Park Service.
 - The return of human remains and cultural objects must not take place until at least thirty days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the installation commander or his/her designee cannot clearly determine which claimant is entitled to custody, the federal agency must not transfer custody of the human remains and cultural objects until the proper recipient is determined pursuant to 43 C.F.R. 10.

Treatment and Disposition Continued

- If a claim is made for human remains and cultural objects, all of the tribes that were involved in the consultations regarding their disposition will be notified.
- Unclaimed Native American human remains and cultural objects shall be returned in accordance with the regulations developed by the NAGPRA Review Committee.

Time Conflicts

- On those rare occasions when Fort Irwin or the tribe(s) is unable to meet its commitments pertaining to time schedules for any activity specified herein, the party that is unable to meet the schedule will notify the other party as soon as physically possible to reschedule the activities to the mutual satisfaction of both parties. Emergency actions will be coordinated by telephone or FAX.

Dispute Resolution

- All disputes regarding the cultural affiliation of discovered human remains and/or cultural objects shall be resolved in accordance with Sections 3 and 7(e) of NAGPRA and the implementing regulations 43 C.F.R. 10.
- Fort Irwin shall follow the procedures set forth in this document regarding consultation with the interested tribes. Should any interested tribe make a conflicting claim of cultural affiliation or dispute the methods of treatment or disposition of human remains and/or cultural objects as delineated herein, the installation commander shall notify FORSCOM/IMA.
- Fort Irwin will continue consultation with the disputing parties, suggest that the disputing parties seek resolution among themselves, and, if the disputing parties concur, go before the NAGPRA Review Committee which is given the authority under 25 U.S.C 3006(c)(4) and 43 C.F.R. 10.16 and 10.17 to make recommendations on the resolution of disputes.
- If, upon receipt of the recommendations of the Review Committee, the most appropriate claimant still cannot be determined, Fort Irwin shall retain the disputed remains or cultural objects until the question of custody is resolved, as stated in 43 C.F.R. 10.15(a)(2).

Additional Parties

- Interested tribes claiming lineal descent or cultural affiliation may join these procedures at any time should they express a desire to do so.
- If an interested party fails to make a written claim prior to the time human remains and cultural objects are duly repatriated or disposed of to a claimant, the interested party is deemed to have irrevocably waived any right to claim such items pursuant to these regulations.

Resumption of Activities

NAGPRA specifies:

- The activity that resulted in the inadvertent discovery of Native American human remains or cultural objects may resume thirty (30) days after certification by the installation commander of the receipt of the notification sent by the Cultural Resources Manager
- Or, activity may resume if the treatment is documented in a written binding agreement between the installation and the affiliated Indian tribes, as per NAGPRA
- In no event may activity resume until the SHPO or, if involved, local law enforcement officials approve.

Summary

- Why Sign a Comprehensive Agreement?
 - Army Requirement
 - Facilitates Decisions
 - Enhances Partnering

Break

2:45 till 3:00

Listening Session



Ft. Irwin, NTC – Native American Tribal Meeting 2-4 October 2003 Ft. Mojave AVI Resort Laughlin, NV Agenda	
2 October 2003	3 October 2003
1:00 p.m. Begin meeting at AVI Resort	9:00 a.m. Reserve meeting
• Welcome – Ft. Mojave Indian Tribe	• Welcome – Ft. Mojave Indian Tribe
• Opening Remarks: Deputy Commander and Chief of Staff Col. Edward L. Fleen	• Opening Remarks – Col. Fleen
• Pledge of Allegiance	• Pledge of Allegiance
• Native American Prayer	• Native American Prayer
• Group Introductions	9:15 a.m. NTC Cultural Resource Program
1:30 p.m. Topics for Discussion – Col. Fleen	• Land Expansion Issues – Mr. Ted Britt
1. NAGPRA Comprehensive Agreements	• Cultural Affiliations Study – Mr. Ted Britt
2. Programmatic Agreements	10:15 – 10:30 a.m. BREAK
3. NTC Cultural Resource Program	10:30 a.m. NTC Cultural Resource Program (Continued)
4. Listening Session	• Filter Opac Research – Mr. Mickey Quilman and Mr. Ted Britt
1:45 p.m. NAGPRA Comprehensive Agreement Presentation – Mr. Ted Britt	• Railroad Spur – Mr. Mickey Quilman and Mr. Ted Britt
2:00 p.m. NAGPRA Comprehensive Agreement – Open Discussion	11:30 – 1:00 p.m. LUNCH
2:45 – 3:00 p.m. BREAK	1:00 p.m. Listening Session
3:00 p.m. Programmatic Agreement Presentation – Mr. Paige Poyner	3:00 – 3:30 p.m. BREAK
4:00 p.m. Listening Session	3:30 p.m. (Continued) Listening Session
4:30 p.m. Conclude Formal Meeting for the day	4:30 p.m. Conclude for the day
6:30 p.m. Ft. Mojave Themed Social Event	4 October 2003 Cultural Site Visit
	7:00 a.m. Meet at AVI Resort lobby for cultural site visit. Transportation will be provided. Water and snacks will be provided.
	12:00 p.m. Return to AVI Resort and conclude meeting. Transportation and assistance of campsite. Travel Vouchers will be provided to ensure prompt return to work for day out of pocket expenses.

Cultural Resource Program Status September 2003

- Ft. Irwin, NTC, comprises 752,730 acres
- 30% has been inventoried for cultural resources.
- A total of 1,047 cultural sites have been documented (618-Ft Irwin, 429-Land Expansion)
- 351 sites have been evaluated
- 58 have been determined/treated eligible for the National Register of Historic Places (NRHP).
- The remaining 538 sites are “considered eligible;” that is, they are protected (i.e., off limits to training exercises) until a formal evaluation has been determined.

Programmatic Agreement Presentation

Programmatic Agreements

Ft. Irwin, NTC—Native American Tribal Meeting
Laughlin, Nevada

October 2, 2003

Programmatic Agreements

What they are... What they are not
What they are...

- An alternative to the Section 106 process for:
 - Similar, repetitive, or routine activities
 - Potential effects on historic properties that cannot be fully determined prior to the Undertaking
 - Other circumstances that warrant a departure from the normal Section 106 process

What they are not...

- An agreement document for complying with NAGPRA

Programmatic Agreements

The difference...

Comprehensive Agreements (CAs)

- Circumstances specific to NAGPRA
 - Repatriation of
 - Grave objects (associated and unassociated)
 - Sacred objects
 - Objects of cultural patrimony
 - Plans of Action (POAs)
 - Focus is consultation with the Tribe

Programmatic Agreements (PAs)

- Circumstances specific to Section 106, ARPA, AIRFA, NEPA
 - Everything that is not specific to NAGPRA
 - SOPs or Protocols
 - Focus is consultation with the SHPO

Programmatic Agreements

What they contain...

- Title and Date
- WHEREAS clauses
- NOW THEREFORE clause
- Project/Program-specific stipulations
 - Exemptions
 - Mitigation/Resource Protection (Technical requirements)
 - Provisions for unanticipated discoveries
 - Interim protection measures
- Administrative stipulations
 - Duration (Expiration and Renewal)
 - Monitoring and Reporting requirements
 - Dispute Resolution
 - Amendment and Noncompliance
 - Termination
 - Anti-Deficiency Act
- Execution/Signature blocks
- Applicable appendices

Programmatic Agreements

What they contain... (Title and Date)

Example Title and Date

PROGRAMMATIC AGREEMENT
AMONG THE
UNITED STATES ARMY,
FORT ROCKY ROAD, TEXAS,
AND THE TEXAS STATE HISTORIC PRESERVATION OFFICER
REGARDING
OPERATION, MAINTENANCE, AND DEVELOPMENT
UNDERTAKINGS
AT FORT ROCKY ROAD, TEXAS

October 2, 2003

Programmatic Agreements

What they contain... (WHEREAS clauses)
Example WHEREAS Clauses

WHEREAS, the United States Army (Army) has determined that operation, maintenance, and development Undertakings at Fort Rocky Road may have an effect on properties that are eligible for inclusion in the National Register of Historic Places (National Register), or on known or unknown archaeological sites that may be eligible for inclusion in the National Register; and

WHEREAS, the Army has completed the identification requirements for all classes of cultural resources at Fort Rocky Road under Sections 106 and 110 of the National Historic Preservation Act (NHPA); and that the inventory has resulted in the identification of two buildings, Building 39 (hangar) and Building 40 (water tank scheduled for demolition); nine archaeological sites; and an archaeologically sensitive area, all of which are eligible, or potentially eligible for inclusion in the National Register; and

WHEREAS, the Army has consulted with the Advisory Council on Historic Preservation (Council) and the Texas Historical Commission (i.e., the Texas State Historic Preservation Officer [SHPO]) to develop a Programmatic Agreement (PA) regarding review of operation, maintenance, and development Undertakings at Fort Rocky Road and the Council has chosen not to participate;

Programmatic Agreements

What they contain... (NOW THEREFORE clause)

Example NOW THEREFORE Clause

NOW, THEREFORE, The Army, Fort Rocky Road, and the Texas SHPO agree that operation, maintenance, and development Undertakings shall be administered in accordance with the following stipulations to satisfy the Army's Section 106 responsibilities for such Undertakings:

Programmatic Agreements

What they contain... (Exemptions)

Example Project/Program Stipulations

STIPULATIONS

The Army shall ensure that the following measures are carried out:

I. Exemptions (Undertakings that do not require review)

LA Any Undertaking that will not alter Building 39.

LA.1 Undertakings that will have no effect on Building 39 and require no additional review:

- Maintenance of, or complete replacement of, any non-original interior or exterior features.
- Application of compatible paint coatings following proper surface preparation.
- Removal or maintenance of any exterior landscape features (sidewalks, shrubs).

Programmatic Agreements

What they contain... (Exemptions)

Example Project/Program Stipulations

STIPULATIONS (continued)

- LB Ground disturbance in areas where the Army, the SHPO, and Native American groups or other interested parties have concurred that there are no archaeological properties present.
- LB.1 Undertakings that will have no effect on archaeological resources and require no additional review:
- Grading, landscaping or other ground disturbing activity within known archaeological sites that have been determined to be ineligible for inclusion in the National Register.

Programmatic Agreements

What they contain... (Mitigation Measures)

Example Project/Program Stipulations (cont.)

II. Mitigation Measures

- II.A Fort Rocky Road has developed an Integrated Cultural Resources Management Plan (ICRMP) in accordance with Army Regulation 200-4. Specific procedures for archaeological survey and the demolition of historic buildings are outlined in the ICRMP and are incorporated into this PA by reference.
- II.B Building 40 has been determined eligible for inclusion in the National Register. To make way for the construction of a new water treatment plant, the water tower requires demolition. Prior to demolition Fort Rocky Road will ensure that Building 40 is documented using Level II, Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) standards.

Programmatic Agreements

What they contain... (Unanticipated Discoveries)

Example Project/Program Stipulations (cont.)

III. Unanticipated Discoveries

- III.A If, during the performance of any Undertaking, archaeological materials or unanticipated effects are found, Fort Rocky Road will take all reasonable measures to avoid or minimize harm to the property until it concludes consultation with the Texas SHPO and any other interested parties.
- III.B Fort Rocky Road will immediately notify the Texas SHPO and develop an action plan that will take into account the effect of the unanticipated discovery.

Programmatic Agreements

What they contain... (Interim Protection)

Example Project/Program Stipulations (cont.)

IV. Interim Protection

Building 40 is scheduled for demolition in Fiscal Year 2004. Until the documentation for Building 40 is complete, Fort Rocky Road will ensure that the building is protected from harm. This shall include, but not be limited to weather damage; damage from plumbing or other utility deficiencies; poor weather proofing; and damage from surrounding demolition and construction activities.

Programmatic Agreements

What they contain... (Duration)

Example Administrative Stipulations (cont.)

V. Duration

This PA shall be null and void if its terms are not carried out within five (5) years from the date of its execution. Before the end of the 5th year, the PA shall be reviewed by the Army, Fort Rocky Road, and the Texas SHPO for possible modification, termination, or extension.

Programmatic Agreements

What they contain... (Monitoring and Reporting)

Example Administrative Stipulations (cont.)

VI. Monitoring and Reporting

Each year following the execution of this agreement or until it expires, is terminated, or the Undertakings are completed, Fort Rocky Road shall provide all parties to this PA a summary report detailing work undertaken pursuant to its terms. The report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received regarding Fort Rocky Road's efforts to carry out the terms of the PA. Failure to provide a summary report may be considered noncompliance with the terms of this PA pursuant to Stipulation VII.

Programmatic Agreements

What they contain... (Amendments/Noncompliance)

Example Administrative Stipulations (cont.)

VII. Amendments and Noncompliance

If any signatory to this PA determines that its terms will not, or cannot, be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this agreement pursuant to 36 CFR Part 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is executed. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with Stipulation IX.

Programmatic Agreements

What they contain... (Dispute Resolution)

Example Administrative Stipulations (cont.)

VIII. Dispute Resolution

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Army shall consult with the objecting party to resolve the objection.

Programmatic Agreements

What they contain... (Termination)

Example Administrative Stipulations (cont.)

IX. Termination

If this PA is not amended following the consultation set out in Stipulation VII, it may be terminated by any signatory. Within 30 days following termination, the Army shall notify the signatories if it will initiate consultation to execute an amended or new agreement.

Programmatic Agreements

What they contain... (Anti-Deficiency Act)

Example Administrative Stipulations (cont.)

X. Anti-Deficiency Act

- X.A. All requirements set forth in this agreement requiring the expenditure of Fort Rocky Road funds are expressly subject to the availability of appropriations and the requirements of the *Anti-Deficiency Act*. No obligation undertaken by Fort Rocky Road under the terms of this PA shall require or be interpreted to require, a commitment to expend funds not appropriated by the Congress for a particular purpose.
- X.B. If Fort Rocky Road cannot perform any obligation set forth in this PA due to the non-availability of funds, the Army, Fort Rocky Road, and the Texas SHPO intend for the remainder of the agreement to be executed. Any obligation under the agreement, which cannot be performed due to the non-availability of funds, must be re-negotiated between the signatories.

Programmatic Agreements

What they contain... (Execution Clause)

Example Execution Clause

XI. Execution

Execution of this PA by the Army, Fort Rocky Road, and the Texas SHPO prior to the approval of this Undertaking and implementation of its terms, evidence that the Army and Fort Rocky Road have taken into account the effects of this Undertaking on historic properties and afforded the Council and opportunity to comment.

Programmatic Agreements

What they contain... (Signature Blocks)

Example Signature Blocks

Fort Rocky Road

By: _____
Commander, Fort Rocky Road

United States Army

By: _____
Federal Preservation Officer

Texas Historical Commission

By: _____
Texas State Historic Preservation Officer

Programmatic Agreements

Why develop PAs

- 3 Choices
 - Case-by-case process
 - PAs
 - Army's Alternative Procedures
- Serves as an alternative for certain types of Section 106 actions
- Encourages Partnering
- Coordinate with CAs for consistency

Programmatic Agreements

Where to find additional information...

- Advisory Council on Historic Preservation
 - <http://www.achp.gov>
- U.S. Army Corps of Engineers-ERDC-CERL
 - <http://www.ccer.army.mil>
- California SHPO
 - <http://ohp.parks.ca.gov>
- National Preservation Institute
 - <http://www.npi.org>

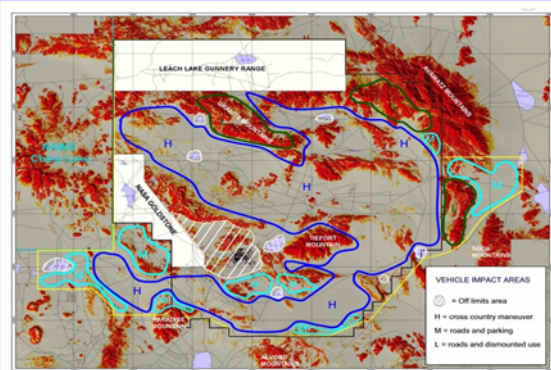
Fort Irwin Cultural Resource Program – Land Expansion Results

Ft Irwin, NTC

Cultural Resources Program

Land Expansion Results

NTC Land Expansion and Proposed Training Activities



Study Areas

- Avawatz
 - 19 study blocks x 124 acres = 2,356 acres (25%)
 - Power Line
 - 4 study blocks x 124 acres = 496 acres (25%)
 - Superior Valley
 - 178 study blocks x 124 acres = 22,072 acres (35%)
- 24,924 acres

Superior Valley Shoreline Site with Beach Ridge



*Photo courtesy of TRC

Superior Valley Sand Sheet Site



*Photo courtesy of TRC

Basalt Quarry

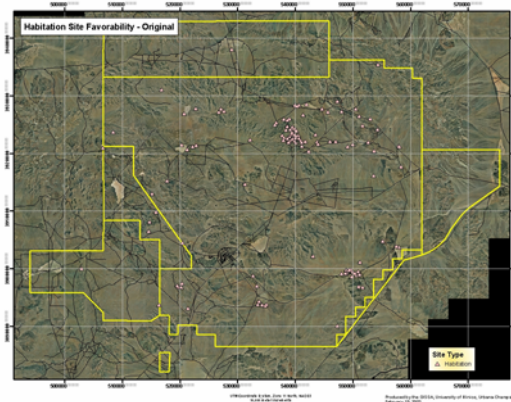
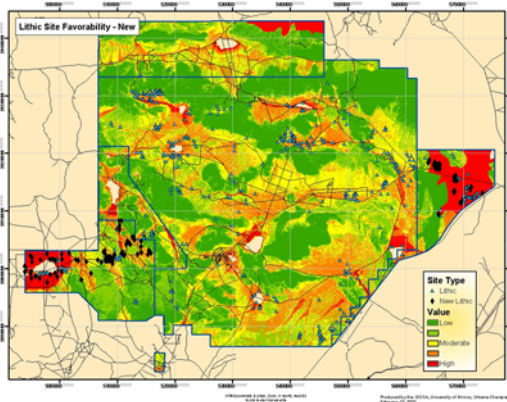
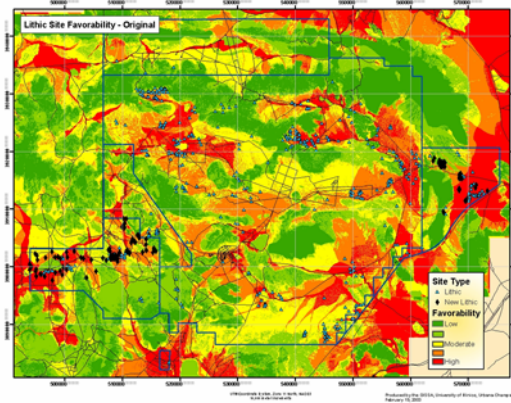
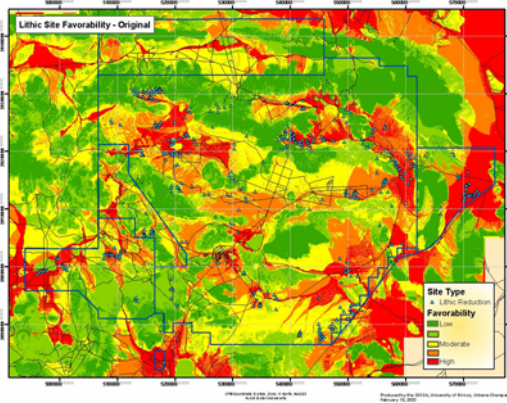
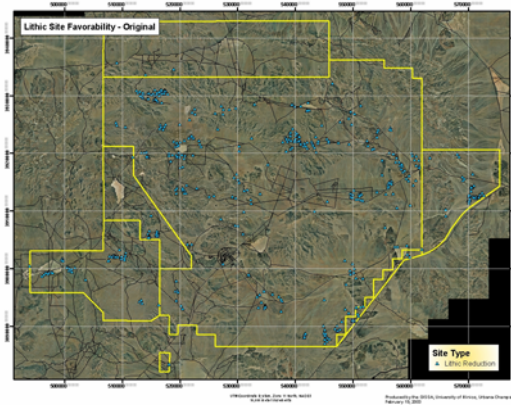


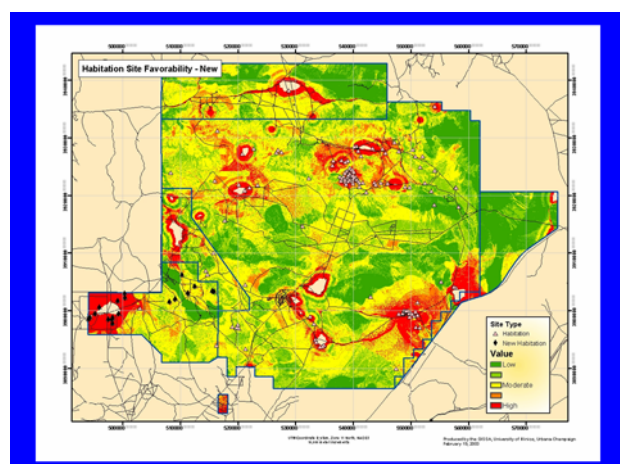
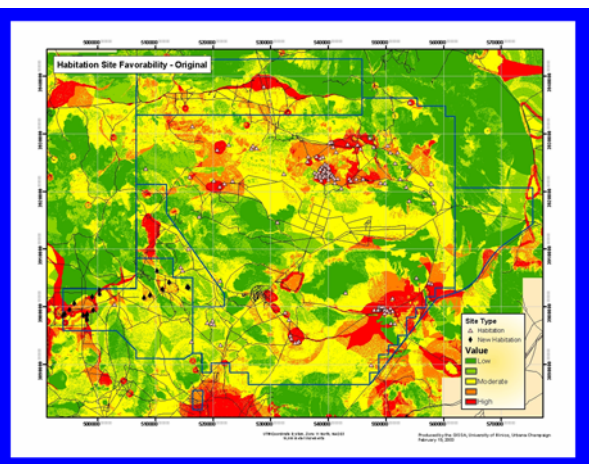
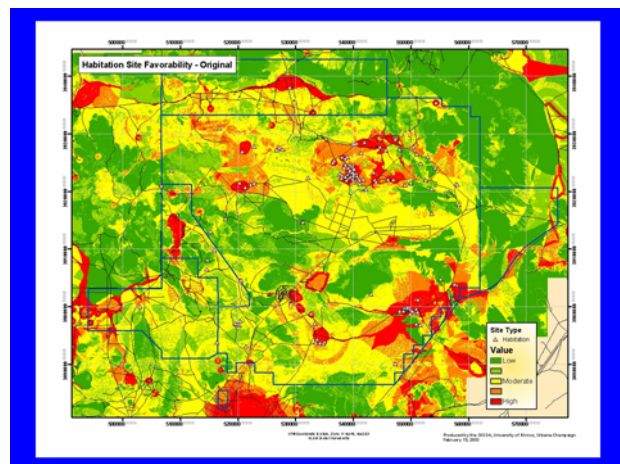
*Photo courtesy of TRC

Desert Pavement - Avawatz



*Photo courtesy of TRC





Model Performance

*Based on Original Model

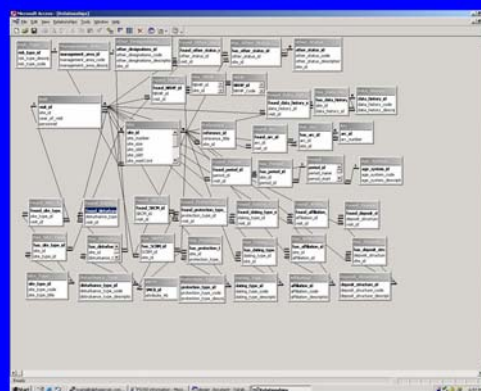
Site Type	% of Sites	% of Area
Habitation	48%	7%
Rock Art	44%	7%
Lithic	32%	11%
Historic	54%	7%

- Goal is to reduce the amount of area to survey so that it includes only those areas where sites are most likely
- Areas already surveyed, expected military impact, and potential for buried sites are also considered

Ongoing Improvements

- Redesign of FICRD
 - more efficient database design
 - more flexible and sustainable data updates and access
- Land Disturbance Analysis

FICRD Relational Database



FICRD Web Based Interface



FICRD Site Entry Form

The screenshot displays the FICRD Site Entry Form. It contains several sections for data entry:

- Site Record Information:** Fields for Site Number (e.g., CA-SR-0001), NDCS No. (e.g., 1066000), Site ARC Number (if any), Site's other designation (if any), Site report title (e.g., Site Report 000), and Site Affiliations (e.g., FICRD).
- Site Management Areas:** Fields for Site Risk (e.g., High) and Site Physical Information (e.g., High).
- Site Physical Information:** Fields for Site Size (e.g., 13400), Site East Coordinate (e.g., 144000), Site North Coordinate (e.g., 2027400), Site Grid (e.g., 4927), and Site Altitude (e.g., 1000).
- Other Information:** Fields for Protection Types, Disturbance Types, Coating Techniques, Deposit Structure, Site Types, and SHRP Status.

FICRD Input Customization



Site Data Browser

The screenshot displays the Site Data Browser, which shows a table of site data. The table has columns for Site Number, NDCS No., ARC No., Other Designations, Report Title, Affiliations, Management Areas, and Risk. The data is organized into two sections: Report for site 1 and Report for site 2.

Site Number	NDCS No.	ARC No.	Other Designations	Report Title	Affiliations	Management Areas	Risk
CA-SR-0002	191	129	multiple	mainland	PRD	SRW	Low

Site Number	NDCS No.	ARC No.	Other Designations	Report Title	Affiliations	Management Areas	Risk
CA-SR-0003	191	1000	corrosion	mainland	Lake	SRW	Low

Fort Irwin Cultural Resource Program – Land Expansion Results

Ft Irwin, NTC

Cultural Resources Program

Cultural Affiliation Study

David D. Earle (2003)

Topics

- Mojave Desert Environment
- Social Organization at Spanish Contact
- Major Indigenous Groups
 - Serrano
 - Chemehuevi/ Southern Paiute
 - Mojaves
 - Kawaiisu
 - Panamint/Timbisha Shoshone

Topics

- Native Places and Trails:
 - Kavitsi--Avawatz Mountains
 - Cave Springs
 - Turuntika--Granite Mountains
 - Xanijav--Soda Mountains
 - Mumukwaiv--Soda Mountain Region
 - Leach Springs--Owl Hole Springs Valley Region
 - Pigment Quarry--Owl Head Mountains
 - Bitter Springs
 - Avi-Kitsekilyke--Calico/Paradise? Mountains
 - Ava-sa'ore--Cady-Cave Mountains

Topics

- Environmental Resources
 - Plants
 - Animals
 - Salt/minerals
- Seasonal Subsistence Practices
- Populations and carrying capacity
- Tribal Populations

Topics

- Tribal Interactions Post 1820
- Extra-Tribal Conflicts
- Impact of the Horse on Subsistence and Political Practices
 - Stock Appropriations (raidings)
 - Tribal Movements and Relocations

Topics

- 1840-1850s
- Impact of “American Emigrants”
- 1860-1870s
- Mining and Military Confrontations
 - Native American Interactions
 - Development of Reservation Communities

Topics

- Earle discusses the problems of Socio-Political dynamics and the concepts of Tribal, Anthropological and Federal Recognition
- Indian “Groups” at the beginning of the Twentieth-century:
 - Chemehuevi
 - Desert Kawaiisu
 - Vanyume Serrano
 - Desert Mojave

Federally Recognized Tribes October 2003

- | | |
|---|--|
| <ul style="list-style-type: none"> • Colorado River Indians • Fort Mojave Indian Tribe • Chemehuevi Tribal Council • San Manuel Band of Mission Indians • Timbisha Shoshone Tribe • Moapa Band of Paiute Indians • Twenty-Nine Palms Band of Mission Indians • *Bishop Paiute Tribe | <ul style="list-style-type: none"> • Morongo Band of Mission Indians • Big Pine Paiute Tribe of Owens Valley • Lone Pine Paiute Shoshone Tribe • Fort Independence Community of Paiute • Kaibab Band of Paiute Indians • Las Vegas Tribe of Paiute Indians |
|---|--|

Ft Irwin Tribal Interactions

- Ft Irwin began Nation-to-Nation Consultation in 2000
- Currently Consulting with 14 Federally Recognized Tribes
- Tribes who have expressed an interest in consulting to date:
 - Timbisha Shoshone
 - Fort Mojave
 - Moapa Paiute
 - San Manuel Band of Mission Indians
 - Colorado River
 - Chemehuevi
 - Las Vegas Paiute
 - *Kaibab

Status

- None of the Tribes consulted have identified any village settlements within Ft Irwin, to date, but do consider the area within their traditional cultural realm (Timbisha and Mojave)
- Traditional/Sacred Places
 - Avawatz Mountains
 - Salt Deposits
 - Supernatural Events
 - Cave Springs
 - Mojave River
 - Travel corridor
 - Rock Shelters
 - Numerous Petroglyph sites

NTC-Fort Irwin Fiber Optic Network and Rail Spur Presentation

Ft Irwin, NTC

Cultural Resources Program

Fiber Optic Network
and
Rail Spur




National Training Center
Fiber Optic Network

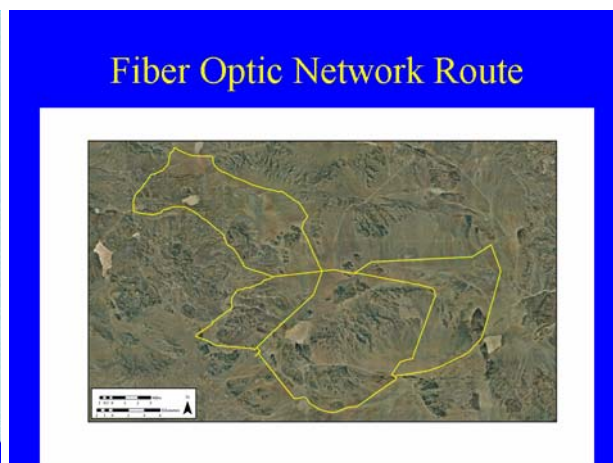
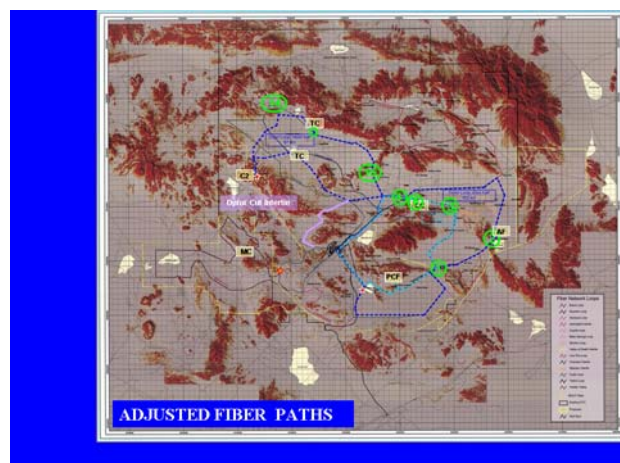
Presented to
Ft Irwin—Native American
Meeting
4-6 October 2003

PURPOSE:

- To provide information to Ops group on proposed land expansion systems integration to:
- Obtain input to meet Ops group requirement
- Use technology to our benefit
- Explore long-term, smart approach techniques

Progress To Date

- Completed second preliminary site survey
- Began flagging adjusted route
- Identified Langford Lake path adjustment
- Submitted Environmental Review Forms and Fiber Initiative DOC to DPW
- Obtained installation estimates for 156" and 72" cover for friction areas
- Generated Cantonment Duct Manhole Spreadsheet



Lithic Sites Identified



Lithic Sites Identified



Fiber Optic Network CRM Results:

- 37 cultural sites were identified
 - 3 Historic/Military
 - 34 Lithic reduction sites consisting of debitage
 - Stone tools:
 - 3 hammerstones
 - 3 cores
 - 1 biface

None of the sites appear to have any characteristics that would qualify them eligible for inclusion in the NRHP

NTC Prepositioned Fleet Implementation Plan



National Training Center Rail Upgrade

18 January 2003

FORSKOM

NTC Prepo Implementation Plan: Rail Upgrade

Rail Spur Design Initiative

Updated Rail Spur Design Assumptions

- Army Transformation of force structure and equipment will continue.
- Rotations from FY 03 and beyond will require estimated 400 railcars, growing to 700 railcars per rotation over time.
- Current Land Expansion will be implemented. Land has been withdrawn from public use.
- Environmental restrictions in Coyote Basin will remain. Manix Trail must be minimized, due to desert tortoise critical habitat and the dust pollution and damage caused by vehicle movement.
- California road prohibitions on Army HETs and restricted use of HETS (commercial or Army) during designated traffic times will continue.
- Any rail spur decision will take 3-6 years to implement; transition operations at Yermo Railhead will be required regardless of decision.
- Train length will not exceed 60 cars; average train weight 5,593 tons. Heaviest train not to exceed 10,000 tons (weight includes car weight)

NTC Prepo Implementation Plan: Rail Upgrade

Rail Spur Design Initiative

Updated Rail Spur Design Requirements and Planning Factors

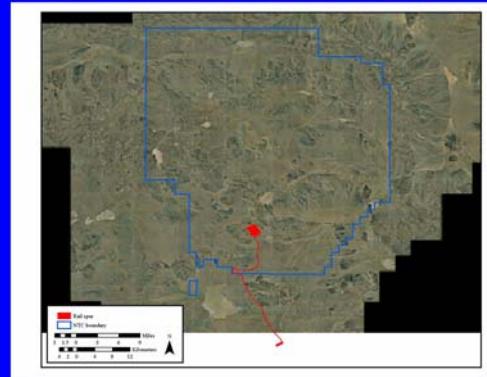
- Requirements:
 - 150-200 railcar/day capacity (supports 2-3 day throughput)
 - Storage track for 360 railcars
 - 24hrs / 7day railhead operation with simultaneous in/outbound ops.
 - Railhead handles: heavy/light tracks, heavy/light wheels, containers, PLS trucks, bi-level RR cars; simultaneous off/on-load for three trains
 - Staging area for 200 vehicles
 - Central rail control (tower, cameras, remote switching, communications)
 - Security and access control facilities
- Planning Factors and Goals:
 - Safety is paramount
 - Minimize use of Manix Trail and Fort Irwin Road
 - Minimize or eliminate intermodal operations
 - Rail crossing maneuver area has minimal impact on training
 - Minimize vehicle OPTEMPO to and from railhead

NTC Prepo Implementation Plan: Rail Upgrade

ANALYSIS RESULTS: Rail Spur Options

- NTC Preferred Option: Railhead on Main Post
 - Reduces movement times and minimizes intermodal support requirements
 - Best supports training requirements
 - Best provides for security of the rail facility and resources
 - Minimizes environmental conflicts; encroachment sensitive to include Main Post
 - Most cost effective, near and long term; ensures future throughput capability

Yermo to Ft Irwin Rail Spur



Rail Spur CRM

- Fieldwork will begin in Mid-October 2003
- Systematic survey involving inventory and NRHP evaluation
- Results and recommendations will be coordinated with all tribes and CA SHPO

Lunch

11:30 till 1:00

Listening Session

Break

3:00 till 3:30

Appendix D: Sample Invitation Letter



DEPARTMENT OF THE ARMY
HEADQUARTERS, NATIONAL TRAINING CENTER AND FORT IRWIN
FORT IRWIN, CA 92310-5000

REPLY TO
ATTENTION OF:

Directorate of Public Works

Dear :

On behalf of the National Training Center (NTC), Fort Irwin, California, you are invited to attend a Nation-to-Nation consultation meeting at The Fort Mojave's AVI Resort and Casino, October 2nd to 4th, 2003. The purpose of the meeting is to continue consultation with your tribe regarding the NTC and your tribal concerns.

We hope this year's meeting to be a continuation of the dialog established last September. Even if you were unable to attend last year, we hope that you are able to participate in October and bring to this year's forum issues important to your Nation. You should have received a copy of the compendium of last year's meeting, "National Training Center – Fort Irwin, California: Tribal Consultations Held on 3-5 September 2002." We hope it will serve as a valuable reference for all consulting parties.

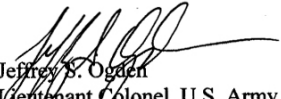
Please find enclosed a draft agenda of the topics we would like to discuss. We have allowed ample time to discuss topics that you may bring to the table as well as time to visit Fort Mohave cultural sites.

Also included are draft copies of (1) the Native American Graves Protection and Repatriation Act Standard Operating Procedures for the NTC (SOP) and (2) a potential Comprehensive Agreement (CA) between Ft. Irwin and your tribe. The SOP details the procedures that Ft. Irwin will take should human remains or Native American cultural items be found within the NTC. The CA is a legally binding agreement that you and the NTC will have the option to sign. It would be an agreement between you and the NTC about the steps the NTC should take when human remains or cultural items are found on the installation, including how and when to notify your tribe. Both the SOP and the CA are lengthy, but we hope you can take the time to read them carefully and bring your comments and suggestions about their content and wording to the consultation meeting.

If you would like to attend, the NTC will pay for all reasonable expenses (e.g., mileage, lodging, meals) for up to three Tribal representatives. Please contact us if you wish to attend and we will send you a detailed agenda. Please include the names of those that will attend and their addresses so we may process invitational travel orders for them.

In the spirit of our Nation-to-Nation relationship, we look forward to meeting with you. You may write me at the above address or contact Mr. William Quillman, Natural and Cultural Resource Manager, of my staff at 760-380-3740.

Sincerely,



Jeffrey S. Ogden
Lieutenant Colonel, U.S. Army
Director of Public Works

CC: Tribal Cultural Resource Manager

Appendix E: Summary of Tribal Consultation Efforts

Tribe	Contact Persons	Result
Big Pine Paiute Tribe of Owens Valley	Jessica Bacoach, Chairperson Tracy Vowers-Stidham, Tribal Administrator	23/9 – called, no answer 25/9 – emailed Tracy Vowers-Stidham 25/9 – received email indicating no one would be attending
Bishop Paiute Tribe	Douglas Vega, Chairperson Lee K. Chavez, TERO Director Allen Spoonhunter, Historic Preservation Officer	23/9 – called, left message with secretary 25/9 – responded to Gaylene Mills' voicemail; she indicated Mr. Vega couldn't come, but other council members might 26/9 – called twice, no contact 30/9 – left voice mail for Gaylene
Chemehuevi Indian Tribe	Edward D. Smith, Chairperson	23/9 – called, no answer 25/9 – Mr. Smith said he would attend
Colorado River Indian Tribes	Daniel Eddy, Chairperson Betty Cornelius, NAGPRA Coordinator	23/9 – called, left message with secretary 25/29 – Mr. Eddy's assistant said that he would not attend. Said other potential attendees were handling their own affairs and she had no information. Asked her who specifically might be considering attending so that they could be contacted, she said she didn't know. Ms. Cornelius could not be reached.
Fort Independence Community of Paiute Indians	Richard Wilder, Chairperson	23/9 – called, promised Mr. Wilder to fax invitation and draft agenda 26/9 – faxed invitation and agenda 30/9 – Mr. Wilder said no one would be attending
Fort Mojave Indian Tribe	Nora McDowell, Chairperson Elroy Jackson, Vice Chairperson Elda Butler, Director AhaMaKav Cultural Society Chad Smith, Tribal Archaeologist	<i>As hosts of the event, constant communication occurred with the Fort Mojave Tribe</i>
Kaibab Band of Paiute Indians	Carmen Bradley, Chairperson Ila Bullets, Cultural Resources Director	23/9 – called, no answer 25/9 – Ms. Bradley not attending; left voicemail with environmental officer Brenda 26/9 – called twice, no contact 30/9 – spoke with Ms. Bullets, she

Tribe	Contact Persons	Result
		<p>promised to call back with more info</p> <p>1/10 – received voicemail from Ms. Bullets; she indicated that no one would be attending</p> <p>2/10 – called Ms. Bullets indicating receipt of voicemail</p>
Las Vegas Tribe of Paiute Indians	Gloria Hernandez, Chairperson	23/9 – indicated that they would be sending two representatives
Lone Pine Paiute Shoshone Tribe	Rachel Joseph, Chairperson Wilfred Nabahe, Environmental Division	<p>23/9 – called, left message with secretary</p> <p>25/9 – neither Ms. Joseph nor Mr. Nabahe in today; emailed Mr. Nabahe</p> <p>30/9 – called twice, left voicemail</p>
Moapa Band of Paiute Indians	Philbert Swain, Chairperson	<p>23/9 – Mr. Swain said representatives may attend, please call him back in a couple of days</p> <p>25/9 – no answer</p> <p>26/9 – called twice, no contact</p> <p>30/9 – secretary indicated 3 members would attend; faxed them additional copies of the agenda</p>
Morongo Band of Cahuilla Mission Indians	Maurice Lyons, Chairperson Nicole King, Executive Assistant	<p>23/9 – called, no answer</p> <p>25/9 – left message with Lyons' assistant Nicole King</p> <p>26/9 – office closed</p> <p>30/9 – left voicemail for Ms. King; no response received</p>
San Manuel Band of Serrano Mission Indians	Deron Marquez, Chairperson Ann Brierty, Environmental Division	<p>23/9 – called, no answer</p> <p>25/9 – secretary indicated that Mr. Marquez would not be coming. Left message for Ms. Brierty</p> <p>26/9 – called three times, no contact</p> <p>30/9 – called twice, left voicemail</p> <p>30/9 – received voicemail from Ms. Brierty; indicated no one would be attending</p> <p>2/10 – left voicemail for Ms. Brierty confirming voicemail receipt</p>
Timbisha Shoshone Tribe	Georgia Kennedy, Chairperson	26/9 – left voicemail; no response received
Twenty-Nine Palms Band of Mission Indians	Dean Mike, Chairperson	<p>23/9 – called, promised Mr. Mike to fax invitation and draft agenda</p> <p>26/9 – faxed invitation and agenda</p> <p>30/9 – spoke with Leanna Thomas; no one attending</p>

Appendix F: List of Meeting Attendees

Fort Mojave Tribe

Elda Butler, former director of the AhaMaKav Cultural Society
Betty Barrackman
Llewellyn Barrackman, former vice chair of the Fort Mojave Tribe
Felton Binter, Tribal Elder
Chad Smith, Tribal Archaeologist/CR Manager
Linda Otero, Director AhaMaKav Cultural Society

Bishop Paiute Tribe

Lee Chavez, cultural representative
Gerald Kane, tribal council member

Chemehuevi Indian Tribe

Donald Smith, tribal representative
Edith Smith, tribal representative
Edward Tito Smith, Chairperson

Colorado River Indian Tribes

Gaye Ray, tribal representative
Phil Smith, tribal representative

Las Vegas Paiute Tribe

Kenny Anderson, tribal representative
Gloria Hernandez, Chairperson

Moapa Band of Paiutes

Lalovi Miller, cultural committee member
Raphella Spute, cultural committee member
Philbert Swain, Chairperson

NTC-Fort Irwin

Muhammad Bari, Environmental Division Chief – DPW
Tad Britt, Archaeologist, ERDC-CERL
Colonel Edward L. Flinn, Duputy Commander and Chief of Staff
Susan Enscoe, Cultural Geographer, ERDC-CERL
Darrell Gundrum, Archaeologist
Bob Horalek, Environmental Attorney
Lt. Col. Jeffrey S. Ogden, Director of Public Works
Mickey Quillman, Natural and Cultural Resources Manager

Consultants/Contractors for Ft. Irwin

Gina Foringer, logistics coordinator, Versar Inc.

Jennifer Shore, logistics coordinator, Versar Inc.

Paige Peyton, Senior Cultural Resources Manager, Geo-Marine Inc.

Appendix G: Native American Consultation List

Big Pine Paiute Tribe of Owens Valley

- *Tribal elections: June 2004*
- *Ms. Bacoch is rarely in her office. The receptionist recommends Ms. Tracy Vowers-Stidham as a telephone contact.*

Ms. Jessica Bacoch
Chairperson
Big Pine Paiute Tribe of Owens Valley
P.O. Box 700
Big Pine CA 93513

Tel: 760-938-2003
Fax: 760-938-2942

Ms. Tracy Vowers-Stidham
Tribal Administrator
Big Pine Paiute Tribe of Owens Valley
P.O. Box 700
Big Pine CA 93513

Tel: 760-938-2003
Fax: 760-938-294

Bishop Paiute Tribe

Tribal elections: 2004

Mr. Douglas Vega
Chairperson and NAGPRA Coordinator
Bishop Paiute Tribe
50 Tu Su Lane
Bishop CA 93514

Mr. Allen Spoonhunter
Historic Preservation Officer
Bishop Paiute Tribe
50 Tu Su Lane
Bishop CA 93514

Tel: 760-873-3584
Fax: 760-873-8255

► Shared email address: tcscc@paiute.com

Lee K. Chavez, TERO Director
Tribal Employment Rights Office (TERO)
Bishop Paiute Tribe
52 Tu Su Lane
Bishop, CA 93514

Tel: 760 873-3338
Cell 760 937-9073
Fax: 760 873-4143
e-mail: tero@paiute.com

Chemehuevi Indian Tribe of the Chemehuevi Reservation, California*Tribal elections: April 2004*

Mr. Edward D. Smith

Chairperson

Chemehuevi Tribal Council

Havasu Lake CA 92363

Tel: 760-858-4301

Fax: 760-858-5400

Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California

Mr. Daniel Eddy

Chairperson

Colorado River Indian Tribes

Route 1, Box 23-B

Parker, AZ 85344

Ms. Betty Cornelius

NAGPRA Coordinator

Colorado River Indian Tribes

Route 1, Box 23-B

Parker, AZ 85344

Phone: 928-669-9211

Fax: 928-669-5675

Phone: 928-669-1339

Fax: 928-669-5675

Fort Independence Community of Paiute Indians*Tribal elections: January 2004*

Mr. Richard Wilder

Chairperson

Fort Independence Community of Paiute Indians

P.O. Box 67

Independence CA 93526

Tel: 760-878-2126

Fax: 760-878-2311

Fort Mojave Indian Tribe*Tribal elections: 2004*

Ms. Nora McDowell

Chairperson and NAGPRA Coordinator

Fort Mohave Indian Tribe

500 Merriman Ave

Needles CA 92363

Fort Mohave Indian Tribe

500 Merriman Ave

Needles CA 92363

Tel: 760-629-4591

Fax: 760-629-5767

Tel: 760-629-4591

Fax: 760-629-5767

Mr. Elroy Jackson

Vice Chairperson

Mr. Chad Smith

Tribal Archaeologist

Fort Mohave Indian Tribe

500 Merriman Ave

Needles CA 92363

Tel: 928-768-4475

Fax: 760-768-7996

Ms. Elda Butler

Director

AhaMaKav Cultural Society

500 Merriman Ave

Needles CA 92363

Tel: 928-768-4475

Fax: 928-768-7996

Kaibab Band of Paiute Indians – Kaibab Indian Reservation, Arizona

Tribal elections: October 2003

Ms. Carmen Bradley

Chairperson and NAGPRA

Coordinator

Kaibab Paiute Tribal Council

Tribal Affairs Building

HC65, Box 2

Fredonia AZ 86022

Tel: 928-643-7245

Fax: 928-643-7260

Ila Bullets

Cultural Resources

Tribal Affairs Building

HC65, Box 2

Fredonia AZ 86022

Tel: 928-643-7245

Fax: 928-643-7260

Las Vegas Tribe of Paiute Indians – Las Vegas Indian Colony, Nevada

Tribal elections: July 2004

Ms. Gloria Hernandez

Chairperson and NAGPRA Coordinator

Las Vegas Colony Tribal Council

One Paiute Drive

Las Vegas NV 89106

Tel: 702-386-3926

Fax: 702-383-4019

Lone Pine Paiute Shoshone Tribe

Tribal elections: Summer 2004

Rachel Joseph

Chairperson

Lone Pine Paiute Shoshone Tribe

1103 South Main St.

Lone Pine CA 93545

Tel: 760-876-1034

Fax: 760-876-8302

Wilfred Nabahe

Environmental Division

Lone Pine Paiute Shoshone Tribe

P.O. Box 747

Lone Pine CA 93545

Tel: 760-876-4690

WJNabahe@lppsr.org

Moapa Band of Paiute Indians – Moapa River Indian Reservation, Nevada

Mr. Philbert Swain
Chairperson and NAGPRA
Coordinator
Moapa Business Council
P.O. Box 340

Moapa NV 89025-0340
Tel: 702-865-2787 x 201
Fax: 702-865-2875

Morongo Band of Cahuilla Mission Indians – Morongo Indian Reservation

Tribal elections: June 2004 (yearly elections)

Mr. Maurice Lyons
Chairperson and NAGPRA
Coordinator
Morongo Band of Cahuilla Mission
Indians
11581 Potrero Rd.
Banning CA 92220

Tel: 909-849-4697
Fax: 909-849-5307

Ms. Nicole King
Executive Assistant
Morongo Band of Cahuilla Mission
Indians
11581 Potrero Rd.
Banning CA 92220

Tel: 909-849-4697
Fax: 909-849-5307

San Manuel Band of Serrano Mission Indians

www.sanmanuel.com/tribal.html

Mr. Deron Marquez
Chairperson
San Manuel Band of Mission Indians
P.O. Box 266
Patton CA 92369

Tel: 909-864-8933
Fax: 909-864-3370

Ms. Ann Brierty
Environmental Division
San Manuel Band of Mission Indians
P.O. Box 266
Patton CA 92369

Tel: 909-864-8933 x 2203
Fax: 909-862-5152

Timbisha Shoshone Tribe

Tribal elections: 2 August 2003?

Note: Tribe split into Big Pine and Death Valley groups in August 2003; situation currently under review by BIA. On August 21, the tribal office said that Ms. Shirley Summers was elected on 2 Aug; however, calls to the BIA on 25 Aug indicated that Ms. Kennedy is still recognized as the chairperson by the Feds. Internet searches suggest that the Death Valley group recognizes Richard Bolland as chairperson. For more info, contact the Bureau of Indian Affairs - Pacific Region - Central California Agency - Sacramento, CA 916-930-3680; ask for Tribal Operations.

Ms. Georgia Kennedy
Chairperson
Timbisha Shoshone Tribe
P.O. Box 459
Big Pine CA 93510-0459

Tel: 760-786-2374
Fax: 760-786-2376

Tribal Historic Preservation Officer
Timbisha Shoshone Tribe
P.O. Box 206
Death Valley CA 92328-0206

Tel: 760-786-2374
Fax: 760-786-2376

Twenty-Nine Palms Band of Mission Indians

Tribal elections: November 2004

Mr. Dean Mike
Chairperson and NAGPRA
Coordinator
Twenty-Nine Palms Band of Mission
Indians
46-200 Harrison Place
Coachella CA 92236

Tel: 760-775-5566
Fax: 760-775-2449

The following tribes have been added to the Fort Irwin Native American Tribes Consultation List as federally unrecognized tribes:

The Kawaiisu Tribe of the Tejon Indian Reservation

- *State-recognized tribe*
- *Next tribal election is Fall 2007*
- *Mr. Robinson has indicated that he wishes to be contacted solely by email and letter*

David Laughing Horse Robinson
Chairman

horserobinson@hotmail.com

The Kawaiisu Tribe
P.O. Box 20849
Bakersfield, CA 93390

<http://home.att.net/~write2kate/artbyhorseindex.html>

The Pahrump Band of Paiutes

- *Mr. Arnold is the executive director of the Las Vegas Indian Council; the work number below reaches him at this office*
- *The Pahrump receive funds from the BIA, including funds for education*

Mr. Richard W. Arnold
Chairperson
Pahrump Band of Paiutes
P.O. Box 3411
Pahrump, NV 89041

rwarnold@hotmail.com

Work Tel: 702-647-5842 x 225
Home Tel: 702-727-6559
Cell: 702-339-7200

Appendix H: Meeting Notes

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3 FT. IRWIN, NTC - NATIVE AMERICAN TRIBAL MEETING

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2 OCTOBER, 2003

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FT. MOHAVE AVI RESORT

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LAUGHLIN, NEVADA

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REPORTED BY: DENNIS D. STEINER, CSR #6, RMR
 BONANZA REPORTING - 2320 PASEO DEL PRADO, B-106
 Las Vegas, NEVADA
 (702) 360-3206

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 IN ATTENDANCE:
 Tad Britt
 Paige Peyton
 Susan Ensore
 Darrell Gundrum
 Raphella Spute
 Lalovi Miller
 Gerald Kane
 Jennifer Shore
 Lee Chavez
 Col. Flinn
 Lt. Col. Jeffrey Ogden
 Mickey Quillman
 Felton Binter
 Bob Horalek*
 Muhammad Bari
 Elda Butler
 Linda Otero
 Gloria Hernandez
 Kenny Anderson
 Gaye Ray
 Phil Smith
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 FT. MOHAVE, AVI RESORT, LAUGHLIN, NEVADA
 THURSDAY, 2 OCTOBER, 2003, 1:00 P.M.
 oOo
 MR. CHAD SMITH: I already know most of
 the people here.
 I'm Chad Smith, tribal archeologist and
 Fort Resource Manager with Ft. Mojave Tribe, and I want
 to welcome you to Mojave Land and the facility here.
 And we appreciate the opportunity to
 consult and discuss matters with Army, and the many
 aspects of what the meetings will entail.
 And with that I'll turn it over to Col.
 Flinn from NTC, Ft. Irwin.
 COL. FLINN: Thanks, Chad. I guess I can
 work from right here.
 Well, it's our pleasure from Ft. Irwin to
 be present at this meeting. We hosted last year's, and
 that one, General Phil, the commanding officer of Ft.
 Irwin and unfortunately was unable to attend; I'm his
 deputy, so I'll be here, and I'm proud to represent him,
 and he does want me to convey to you that he wishes that
 he could be here, but we've got units in training right
 now, and that's where his responsibilities lie, basic
 training.
 But we're honored to be with you so we can
 talk about some of these issues that we are working in
 order to come to some agreements on how we're going to
 handle the archeological and cultural sites that we find
 out at Ft. Irwin.
 The Indians have a prophetization of the
 warrior spirit, and that's what we try to embed in our
 soldiers that come through, and that is the warrior
 spirit.
 A little bit different, but when we send
 young Americans off to harm's way as we've done
 recently, we want to know that they've had the best
 training, and that they have this feeling of the nation
 and a feeling of pride in their unit and confidence in
 that what we've done out at Ft. Irwin is going to
 prepare them for combat operations.
 Many of those lessons that we incorporate
 into our training, you can follow history and you can
 find many of those same kinds of tough conditions and
 hard training that Native Americans had when they were
 at war with the United States of America, as it were.
 And recently we've been blessed, I think,

* The original transcript of the meeting has misspelled this name as Horcek. It has been corrected to Horalek throughout this transcript.

0005

1 as a nation working with some of the multi-cultural
2 issues that we're working through of having learned
3 about Native Americans who had fought for the freedoms
4 that this nation enjoys, some of the historical events
5 of World War II and some of the great Native Americans
6 that fought for our nation and hold the highest honor,
7 that was bestowed upon them, and for that from a soldier
8 to those Native Americans, or fought in the Navy for
9 this nation, we are indebted to their sacrifices to help
10 this nation stay free.

11 And so why are we here for today? Well,
12 we know -- we have a pretty large piece of terrain here
13 in the middle of the Mojave Desert called Ft. Irwin, we
14 call it; Ft. Irwin is the place, the National Training
15 Center is what it is, it trains Army units to go into
16 combat operations, and we use a good portion of that
17 land for real estate combat training, firing live
18 bullets; we know that there is a rich history of Native
19 American presence on that land, and we know it's our
20 responsibility and it is our privilege to be able to, as
21 we find those, to appropriately record and take care of
22 those sites or artifacts that we find out there, and
23 that's one of the things we want to sort out as we have
24 these discussions, to make sure we have appropriate

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1 procedures in place to honor those things that we find
2 that are on the grounds of Ft. Irwin.
3 The agenda is out there in front of us, I
4 see we have lots of different topics that we want to
5 talk about today. The important thing is one, to
6 dialogue with each other, understand what we want to get
7 out of here and find some common ground where we can
8 agree and hopefully look forward to a good bond and a
9 lasting relationship, and operating procedures and how
10 we're going to handle artifacts and sites at Ft. Irwin
11 that satisfies the Army's needs and the needs of people
12 who have blessed us with their presence across these
13 lands.

14 So as for Chad and the tribe here that's
15 hosting this conference, thank you.

16 I appreciate you taking time out to do
17 this for us.

18 As I look around this conference room, I
19 notice a stark difference between the one we had, where
20 we held ours last year; this one has got a lot of
21 interesting displays, and so for those of you from Ft.
22 Irwin, you can get out there and take a look at them
23 during the break.

24 I wish we had such a fine facility,

0007

1 but, again, thanks, Mr. Smith and your team, and for
2 setting this up.

3 MR. CHAD SMITH: Perhaps next we should
4 do introductions.

5 MR. BRITT: Okay.

6 My name is Tad Britt, I am an
7 archeologist and cultural resource manager. I work for
8 the Army Corps of Engineers based in Champaign,
9 Illinois.

10 I've been working with Ft. Irwin for the
11 past three years on helping them develop their cultural
12 resource management program, some of which you'll hear
13 about today and tomorrow.

14 I've also been helping them with
15 facilitating the nation-to-nation consultation.

16 That's kind of why we're here. you'll
17 hear a lot more from me over the next two days.

18 I would like to make a point and introduce
19 the Steiners, the company, they're going to be recording
20 this meeting, everything that's said, we'll get all of
21 the slides, and eventually everybody that's here except
22 for the Bishop Tribe, received this report from our
23 meeting last year, so this is what you'll be expecting
24 to get.

0008

1 I'll give you this copy before we leave so
2 that you know what everybody said and what we agreed to,
3 if there are any questions, you can refer back to this.

4 That's Dennis and Vi Steiner, and at any
5 time they may ask us to speak up.

6 I think we're doing pretty good so far.
7 And there is a lot of noise coming from this side, the
8 air conditioners, and with that I'd like to turn it over
9 to Kenny, then we'll go around the room, and tell us who
10 you are and who you represent, and anything else you
11 would like to add.

12 KEN ANDERSON: Kenny Anderson, Las Vegas
13 Paiute Tribe.

14 MS. HERNANDEZ: I'm Gloria Hernandez, I'm
15 the Tribal Chair, Las Vegas Paiute Tribe.

16 And this is something fairly new to our
17 area, I mean as far as repatriation.

18 We just recently had one last year, and
19 obviously it's something that we need to be concerned
20 with, and I'm glad to see that there are people out
21 there who do care and who have the input from the tribes
22 as far as making decisions.

23 MS. OTERO: My name is Linda Otero, Ft.
24 Mojave. Welcome to Ft. Mojave.

0009

1 I notice now, everyone is spelling Ft.
2 Mojave with a J -- I mean an H.

3 I'm correcting all of my writing here. We
4 spell it with a J, that's just for technical purposes as
5 well.

6 Welcome to Ft. Mojave. I am currently the
7 director of the Ft. Mojave Aha Makav Cultural Society.
8 I just assumed the duties from the former director here.

9 I just assumed the duties from our former
10 director here, Elda Butler.

11 MS. BUTLER: Elda Butler, former director
12 of the Aha Makav Cultural Society.

13 MR. BARI: I'm Muhammed Bari, I'm chief of
14 the environmental section over at Ft. Irwin, and we are
15 the caretakers of all of those archeological sites at
16 Ft. Irwin.

17 MR. HORALEK: I'm Bob Horalek.

18 I'm an environmental attorney at the NTC Ft. Irwin.

19 MR. QUILLMAN: I'm Mickey Quillman. I'm

20 the natural and cultural resources manager at Ft. Irwin.
21 I'm in no way an archaeologist. I just inherited the
22 job and get to do the paper work.

23 I leave the real work to Darrell
24 Gundrum.

0010

1 COL. FLINN: Colonel Ed Flinn, I'm Deputy
2 Commander and Chief of Staff of Ft. Irwin National
3 Training Center. I've been there a little over four
4 years, in several different capacities, and I find this
5 job the most exciting because I get to do things like
6 this and work some of the policy issues associated with
7 the training at Ft. Irwin.

8 LT. COL. OGDEN: Lieutenant Colonel Jeff
9 Ogden, I'm the Director of Public Works at Ft. Irwin
10 National Training Center.

11 Bari and Mickey and Darrell all work for
12 me, come under one of my divisions, and my shop there.
13 Excited to be here to continue on with what we did last
14 year in September.

15 MR. CHAVEZ: Lee Chavez, Bishop,
16 California, Bishop Paiute Shoshone Tribe.

17 I'm here as a cultural representative of
18 the Bishop Tribe. I work with Nellis Air Force Base at
19 the Nevada Test Site, Yucca Mountain, and also around
20 that area, and I'm also tribal employment rights for the
21 reservation.

22 MR. KANE: I'm Gerald Kane from Bishop
23 Reservation, Tribal Council Member.

24 MS. MILLER: I'm Lolovi Miller from the
0011

1 Moapa Band of Paiutes. I'm a cultural committee member.

2 MS. SPUTE: I'm Raphael Spute from Moapa,
3 and I'm also a culturalist.

4 MR. GUNDRUM: My name is Darrel Gundrum,
5 I'm an archaeologist and a civilian contractor at Ft.
6 Irwin and NTC.

7 MS. ENSCORE: Susan Enscore, I'm a cultural
8 geographer, I'm the head of the cultural resources team
9 at CERL, so I work with that.

10 MS. PEYTON: My name is Paige Peyton, I'm
11 a cultural resources manager, and I work with
12 Geo-Marine, and the folks at Ft. Irwin have asked me to
13 comment and talk to you a little bit today about the
14 Programmatic Agreements, what they are, what they look
15 like and why we do them.

16 MS. SHORE: I'm Jennifer Shore, I'm a
17 contractor and I'm coordinating the logistics of the
18 meeting, so if you have any questions or concerns or
19 needs, just let me know, I'll do my best to take care of
20 it.

21 MR. BRITT: Thank you all.

22 Before we get started I would like to have
23 a blessing and would like to, if we could, all stand and
24 say the pledge of allegiance.

0012

1 (Pledge of Allegiance)

2 MS. BUTLER: We pray, Rich Spirit, that
3 thou will be with us and help us to see our way clear.
4 I know that some of you people have come from a far

5 distance, and we pray that you protect and see them
6 safely home and that you will help us in any future
7 meetings. Amen.

8 MR. BRITT: As everybody has noted, I've
9 got the dates wrong except for here. I changed them
10 this afternoon, they will be corrected in the report
11 that goes out. I do apologize; it's an oversight on my
12 part, but basically we'll follow the times today, the
13 topics we'll discuss this afternoon will be Native
14 American Protection and Repatriation Act, standard
15 operating procedures and comprehensive agreements, and
16 we'll also talk about Programmatic Agreements,
17 agreements between the nations and the Army, break at
18 2:45 to 3:00.

19 The restrooms are downstairs in the main
20 lobby. We'll have refreshments back here any time
21 during today you're here, if you need to get up and get
22 something to drink, please feel free. We'd like to keep
23 these meetings informal.

24 We like to stick to the schedule, but any
0013

1 time you have a question please do not hesitate to ask,
2 or if something needs to be repeated or a further
3 explanation, please do not hesitate.

4 After Paige's talk at 3:00, at 4:00
5 o'clock we'll have what we call a listening session, so
6 again if there are some issues that aren't on the agenda
7 that you'd like to raise, please feel free to produce,
8 bring them up at that time.

9 And then tonight we're going to have the
10 occasion of -- the occasion to have some Ft. Mojave
11 dancers come and perform for us.

12 The schedule says 6:30, but it's actually
13 going to be at 7:00, so if you would make a note of
14 that, we'll meet back up here in this room, we'll have
15 refreshments. We won't have any food per se, so I'll
16 encourage you to get supper on your own and to be back
17 here at 7:00.

18 I'm going to let you add a couple words
19 before we get started -- and then we'll go on to 8:00,
20 8:30 or so, it will be an informal social mixer.
21 Jennifer made a good point. If I could turn it over to
22 her, the Army is reimbursing you for your travel time
23 and expenses, I'm going to let her tell you what you
24 need to keep and how you need to coordinate with her.

0014

1 MS. SHORE: Before you leave you'll need
2 to get a travel reimbursement from me. It's a basic
3 form. All you have to do is put in your own mileage to
4 come to the meeting and you need to save any receipts
5 that you have for meals that you need to be reimbursed
6 for, but that's it.

7 It's got an address on it where you mail
8 it in, and you should be getting a check within two
9 weeks.

10 Mr. BRITT: And any questions, she's the
11 one.

12 (Papers were handed out.)

13 MR. BRITT: What I'm passing out here are
14 Native American on the NAGPRA standard operating

15 procedures that we have implemented at Ft. Irwin. These
16 are what we are following until we get the comprehensive
17 agreements signed between your respective nations and
18 Ft. Irwin.

19 What I'll do today is briefly go over
20 what these are, and the benefits of actually having an
21 agreement as well as your input on that agreement.
22 Would you pass these out?

23 MS. HERNANDEZ: I have a question. Only
24 because I'm not familiar with it, how the land base for
0015

1 Ft. Irwin, how big is it and does it only encompasses
2 California or does it go into other areas?

3 MR. BRITT: That's a good question,
4 Colonel?

5 COL. FLINN: The original boundaries of
6 Ft. Irwin which was established in 1941 as an
7 anti-aircraft artillery training site, 640,000 acres,
8 all in the State of California, I believe all that's in
9 the county of San Bernardino.

10 Two years ago the Congress enacted
11 legislation which would withdraw an additional 110,000
12 acres of federal lands, and basically deeded those lands
13 to the Department of the Army and to Ft. Irwin for us to
14 expand the area that we're able to train on, so that
15 takes us up to about 760,000 acres or so by the time we
16 get all of those lands incorporated into the training
17 department.

18 MS. HERNANDEZ: So the additional lands
19 that you have they have studies already been looked at
20 to find out whether or not -- the additional lands, have
21 they already been looked at?

22 COL. FLINN: There are ongoing surveys.

23 MR. BRITT: Correct.

24 I'll address that, land expansion I'll do
0016

1 that tomorrow. But briefly, yes, we have, we've looked,
2 systematically we've sampled 50 to 25 percent of those
3 areas, depending on what type of usage is going to be
4 done there, what type of training.

5 MS. HERNANDEZ: I was just wondering
6 because I had talked to some people that were -- and
7 they were going to come here and they made a call and
8 they said that it did not really include them per se,
9 that it was just the tribes that were affected in this
10 area, and I don't understand.

11 MR. BRITT: I'm not familiar with that
12 tribe, but maybe at the break or something I can get
13 that information and we can see if they have an interest
14 in being here.

15 MS. HERNANDEZ: I was wondering if you
16 were just including certain tribes that were in the
17 location.

18 MR. BRITT: There are 14 tribes that we're
19 consulting.

20 MS. HERNANDEZ: Do we have a list here?

21 MR. BRITT: I'll get to that, if you can
22 wait.

23 MS. HERNANDEZ: I'll wait.

24 MR. BRITT: I'll get on to that on the

0017

1 cultural affiliation study, that will be tomorrow, but
2 there are 14 federally recognized tribes that are in
3 this area.

4 Real briefly, we've conducted a cultural
5 affiliation study. That was our first step, and who do
6 we consult with?

7 Nobody tells you, so we're doing our
8 studies to learn who we need to consult with.

9 The list is -- is not limited, so, you
10 know, we've just found out about the Bishop and we're
11 trying to bring them up to speed.

12 What I'll do is briefly tell you or go
13 over what a comprehensive agreement is.

14 A comprehensive agreement contains all of
15 the information that's in the standing operating
16 procedures.

17 The standing operating procedures are
18 procedures that we follow, should we come across an
19 inadvertent discovery of human remains.

20 What I'm going to do, I'm not going to
21 read these verbatim, but I'll explain each slide.

22 The handout from last year that you should
23 have, again has all of the same information, you'll get
24 it again this year.

0018

1 So and then the comprehensive agreement is
2 what we agree to, we'll actually -- a representative
3 from your nation will sign it, the commander of Ft.
4 Irwin will sign it, it will be a legally-binding
5 document.

6 These are the legal drivers for
7 consultation, NEPA, National Historic Preservation Act,
8 American Indian Freedom of Religion Act, Environmental
9 Justice, there's a host of laws that requires the Army
10 to consult.

11 These are the 14 tribes that we consulted,
12 Colorado Indians, Ft. Mojave Indian Tribe, the
13 Chemehuevi, the San Manuel, Timbisha Shoshone, Moapa
14 Band, Twenty Nine Palms, Bishop Paiute, Morongo, Big
15 Pine Paiute, Lone Pine Paiute, Ft. Independence, and
16 Kaibab and the Las Vegas Tribe. Again, it's not an
17 exclusive list.

18 Basically, the outline for both of these
19 documents are real similar. As introduction, that's
20 where you have your "whereas" clauses in your
21 comprehensive agreement; definitions as defined by law.

22 The policies and procedures that the
23 government has agreed to, or has put into place that
24 they will follow; notification practices, procedures,
0019

1 should something occur, an inadvertent discovery be
2 made, types of identification, those procedures that
3 they will follow to identify the remains. Then we'll
4 discuss the proper treatment and disposition of those
5 NAGPRA remains or cultural items.

6 There's also provisions in there for the
7 timelines, the government will notify you within three
8 working days, we'll go over this, these are all in law
9 and also if there's a dispute, if there are competing

10 claims or there's a difference, there are provisions to
11 address those issues as well.

12 Additionally, if you have competing
13 claims, you may have additional parties, you may have
14 unrecognized federal -- or federally unrecognized
15 tribes, state tribes, tribes that are -- have applied
16 for federal recognition.

17 A lot of times they'll partner with an
18 existing tribe and we'll try to work with them to get
19 the remains back; and then finally, the resumption of
20 activities, if it's a training activity or construction
21 activity, all that work ceases until a plan of action is
22 implemented so that there's no further disturbance to
23 that area and all of this is outlined in these
24 documents.

0020

1 This is kind of a general notice, Ft.
2 Irwin is engaged in continual cultural resource
3 management via inventory, evaluation, protection and
4 preservation in place; also, we've got an active program
5 for interpretation and public outreach.

6 The potential, the nature of the
7 activities that go on, the training nature's, they're
8 using these vehicles, they're moving to lighter, faster
9 vehicles; they're needing to use more land. There's
10 over a thousand square miles.

11 The nature of the training mission is that
12 they're impacting more land.

13 Prior to that they were doing inventory
14 and evaluations but there's always a potential for
15 inadvertent discovery.

16 I will interject at this point that there
17 are no identified NAGPRA items at Ft. Irwin that have
18 been documented, so I just want to make sure that you
19 understand that now.

20 Ft. Irwin has no inventory of NAGPRA items
21 or cultural items.

22 If human remains or funerary items are
23 discovered, there's a process that we follow.

24 Basically we try to determine by following

0021

1 NAGPRA lineal descent, cultural affiliation and finally
2 repatriation of those items.

3 The definitions that are covered, they're
4 spelled out in the law, what a burial site is, what is
5 cultural affiliation, funerary items, sacred objects,
6 objects of the ultimate patrimony, what is an Indian
7 tribe, what is an inadvertent discovery, cultural
8 objects. They're all spelled out in the law. We don't
9 have the opportunity to change those, they're legal
10 definitions.

11 Ft. Irwin's policy in following NAGPRA is
12 to protect, to identify proper ownership and to ensure
13 rightful treatment and ultimately repatriation of those
14 items.

15 Initially, if an inadvertent discovery is
16 found, the cultural resource manager has 24 hours to go
17 out and make a site visit and determine whether or not
18 there are human remains, also to determine whether or
19 not it's a recent crime scene.

20 If that's the case, CID the Criminal
21 Investigation Division of Ft. Irwin is brought in, San
22 Bernardino County Sheriff is brought in; it's treated as
23 a crime scene, it's not a NAGPRA scene.

24 Basically, all work ceases in that area

0022

1 until it's been determined "Is it an ancient NAGPRA site
2 or is it a modern crime scene?"

3 Notify the California State Historic
4 Preservation office.

5 If it is determined that it is Native
6 American, if they are Native American remains or items
7 of cultural patrimony, Ft. Irwin will bring in the
8 necessary specialists, whether they be forensic
9 anthropologists, physical anthropologists, tribal
10 elders, tribal archeological cultural resource
11 specialists, whatever is needed to determine lineal
12 descent or cultural affiliation. No destructive
13 analysis will be done.

14 All of the remains would be examined in
15 place if at all possible.

16 The site will be protected, stabilized and
17 monitored until the proper disposition; no items will be
18 removed.

19 And then finally the cultural resource
20 manager will develop and implement a plan of action
21 which the commander will sign.

22 The notification process, immediately,
23 Darrell will notify the commander, the commander then
24 has thirty days to respond back in writing that he has

0023

1 received the notice and that -- basically it's
2 documented to the record that this notice has been filed
3 and that he has to respond.

4 A plan of action will be written.

5 The memorandum of notification -- Well,
6 Darrell has 48 hours to get that in.

7 Range control is notified. Basically the
8 word gets out to Ft. Irwin, we've got a sensitive area,
9 no further activity in that area, a plan of action is
10 written.

11 Then the installation commander has three
12 days to notify the federally-recognized tribes. We have
13 this issue, the decision on which tribe is -- again
14 based on the law. As of today we're doing -- we're
15 notifying 14 tribes.

16 All telephone calls involved, all mailings
17 are certified return receipt so that everybody knows
18 exactly when the notification was sent and what was
19 sent.

20 Determining ownership or control of Native
21 American human remains and cultural objects is first
22 done by lineal descent that is what is -- lineal descent
23 is your ancestors descent, through the direct lineage,
24 was it attributed to Indian tribes who were recognized

0024

1 as having traditional cultural area, that occupied that
2 area.

3 Cultural affiliated tribes, it's very
4 similar to that, and then aboriginal owners of the land

5 which were determined by the courts.

6 Basically we're talking about three
7 concepts: Ancestral, aboriginal and ceded lands.
8 That's the way the law looks at this.

9 The cultural resource manager keeps a list
10 of all of these tribes as well as telephone numbers,
11 you'll see here in a minute. We've got election dates,
12 who the tribal chairperson is, who the NAGPRA person is,
13 the date on the size of the tribe, when the tribal
14 elections are held so we can notify, these are
15 constantly updated so that they know who to contact,
16 should something like this occur.

17 Again, I've mentioned that if something
18 was found I'll make every effort to not disturb it,
19 examine it in place, not do a destructive analysis, but
20 bring in the appropriate specialists as necessary.

21 Plan of action, ultimately the plan of
22 action takes some interaction between the US Army and
23 your respective nations.

24 These are documented and memorialized in
0025

1 the comprehensive agreements.

2 The information that we need from each of
3 the tribes are these items that are highlighted in this
4 bold yellow here, and I want to go over these.

5 And ultimately a comprehensive agreement,
6 the Army is required to have it, all of the tribes, it's
7 an Army requirement, okay, and it takes a signatory on
8 both parties, the commander for Ft. Irwin and the
9 chairperson for the tribe.

10 But we've got to be able to share
11 information, and some of that information has to come
12 from each of the respective tribes, and those types of
13 information need to be included in the comprehensive
14 agreements are what kinds of materials are considered to
15 be cultural objects, specific information that you can
16 share with installation to determine custody, specific
17 treatment, care and handling of human remains, cultural
18 objects, the archeological and recordation of the human
19 remains and cultural objects.

20 The types -- any types of analysis for
21 identification of human remains and cultural objects.

22 What types of analysis we've allowed;
23 steps to be followed to contact any tribal officials at
24 the time of an inadvertent discovery; the kinds of
0026

1 traditional treatment that should be afforded to the
2 human remains or cultural objects.

3 The nature and types of reports that your
4 tribe would like to receive, and finally and ultimately
5 the disposition of these human remains and cultural
6 objects.

7 All of those are input that we need to get
8 from the tribes to get that into the comprehensive
9 agreement so that we can have a legally-binding
10 document.

11 Again, I've kind of gone over treatment
12 and disposition. It's done through consultation, done
13 with priority of ownership.

14 The tribes -- again, this comes -- tribes

15 must demonstrate affiliation by preponderance of
16 evidence; single claim cannot be identified, done by
17 consultation, if you cannot agree to -- if you cannot
18 agree to agree it goes to the NAGPRA dispute resolution
19 committee; make every effort to get everything taken
20 care of within thirty days.

21 If you cannot protect -- typically the
22 preferred alternative -- Well, I'll say as a general
23 example, if human remains are found and they can be
24 preserved and protected in place, it's generally the
0027

1 preferred alternative by the Army and motion of the
2 Native American nations. That's always the preferred
3 alternative.

4 The Army sees it that way and any effort
5 we can to do that, the Army would like to do that. If
6 not, the procedures would be outlined in those, would be
7 repatriated and moved if necessary.

8 Again, some more of the law, it basically
9 says that we will consult with your tribe to respect
10 your religious and cultural practices under ARFA.

11 Again, that will come in under the
12 treatment and disposition.

13 If they do have NAGPRA objects, this
14 doesn't really apply to Ft. Irwin but public notices
15 will be published in the appropriate -- in the regional
16 newspapers, at least two notices two weeks apart;
17 follows the law so that everybody is afforded the same
18 equal rights to comment or to make a claim.

19 So basically it's an informational --
20 besides the telephone calls and certified mail, to make
21 everybody aware that these items may be out there.
22 Again, Ft. Irwin does not possess any Native American
23 NAGPRA items at this point. It doesn't plan to.

24 Again, this is -- I've kind of gone over
0028

1 this, claims are made, disposition will be -- ultimately
2 will follow NAGPRA, we'll go through, everything will be
3 -- if there's a problem, look to NAGPRA -- and again,
4 these don't apply to Ft. Irwin at this point.

5 We talked about time conflicts, I know
6 that Ft. Irwin knows what it has to do.

7 If you're not able to respond, if your
8 tribe for some reason is unable to respond, basically
9 you could make a good faith effort to notify somebody,
10 that will suffice.

11 And again, this can be written into the
12 comprehensive agreement, if for instance, if your tribe
13 only meets once a month and you don't get the letter
14 until after you meet and then it's another thirty days,
15 we can put provisions in there so that these things --
16 you all will be given an ample amount of time.

17 Again, we'll go through the dispute
18 resolution, that's pretty much set forth, it follows the
19 law. I'm not going to read all of this, but again, it
20 will be in the handout.

21 Additionally, parties can join in at any
22 time, as I mentioned earlier.

23 Unrecognized tribes, if they feel like
24 they have a claim, they can partner with a recognized

0029

1 tribe to get those remains. That's worked in many
2 instances, and it's typically not a problem. However,
3 there is something here that's important, if an
4 interested party fails to make a claim within the time
5 limits, objects have been repatriated, they basically
6 waive their rights to those items. We try to be
7 informed as much as we can.

8 Finally, the provisions allow for the
9 activities after everything -- all of the paperwork is
10 done, concentration is over with in thirty days, if
11 everything has worked out, we resume activities.

12 Why sign a comprehensive agreement? As I
13 told you, it's an Army requirement, the Army is required
14 to have this.

15 The benefits to your nations, I guess as
16 the Army sees it, is a sharing of information.

17 We have a document, we have procedures, we
18 know exactly what to do; we know exactly what you want
19 us to do; we've agreed to it and we can do it.

20 I call it insurance. It's insurance for
21 the Army, it's also insurance for the Native American
22 tribe because you know that you're going to share
23 information, you know the exact procedures you're going
24 to do, you know that your wishes and rights will be

0030

1 respected and implemented. Those are the benefits of
2 the comprehensive agreement.

3 And it enhances the partner, it -- it's
4 just one aspect of consultation, but when we get this
5 document signed we know exactly what we need to do. It
6 builds trust and it strengthens the relationship.

7 It's really -- an agreement like that,
8 it's really best for both parties and I really want to
9 stress that.

10 And I would like to maybe discuss before
11 the end of this meeting when we could get some of this
12 information we need to get from your tribe so that we
13 can get an agreement signed.

14 Again, it will protect both parties in
15 case something should happen at Ft. Irwin.

16 In lieu of that, until we get a
17 comprehensive agreement signed we will be following the
18 standard operating procedures. Those are the same thing
19 as the comprehensive agreement. All of the steps are
20 the same except we don't have that information that we
21 need from the tribes for treatment.

22 So we'd really like to get that
23 information from you.

24 I'll be working with Ft. Irwin to collect

0031

1 that information so that we can get this agreement
2 document signed.

3 MS. HERNANDEZ: I have a question, are
4 there provisions -- I don't know maybe you're going to
5 address this later on -- but I just have a real quick
6 question.

7 Do you have -- what if there's like an
8 issue between like two tribes, as to who -- who the
9 remains belong to, would the Army make the decision?

10 MR. BRITT: No, that goes to the
11 NAGPRA Review Committee. There's a NAGPRA dispute --
12 No, the Army has no business -- our mission is to
13 preserve and protect, not to show favoritism to one
14 tribe or the other.

15 MS. HERNANDEZ: The other question, what
16 if the tribes decide that they want to leave the remains
17 there?

18 MR. BRITT: If that is the preferred Army
19 alternative, if it can be done so that it doesn't affect
20 the mission of training at Ft. Irwin.

21 MS. HERNANDEZ: What about setting up some
22 land base on the base, could that be done?

23 MR. BRITT: That has been done at other
24 bases.

0032

1 At Ft. Irwin, as much as it's been
2 studied, thirty percent of a thousand -- think about
3 this a lot, you know, a lot of area has been surveyed
4 and there's not been a single instance of a known NAGPRA
5 site.

6 There's one instance of a possible
7 cremation site, but we just -- it's -- we want to plan
8 for this. That's the purpose of these documents, is to
9 plan for something, should that occur.

10 Back East I've done some work where we've
11 actually -- I've worked with the Army where we actually
12 set aside some land and created a Native American
13 Cemetery where there were -- they were doing some
14 projects that had -- there was a waterway project, Corps
15 of Engineers, and they had to disturb this area, there
16 was no way around it, and they basically had ceremonies,
17 removed the remains and re-interred them.

18 At this point I don't think there's a need
19 for Ft. Irwin to have that, but I'm sure they would
20 would be willing to consider it.

21 I'll back up. They've actually got two or
22 three burials, historic miner or ranchers, burials at
23 Ft. Irwin and they are protected. But no Native
24 Americans that we're aware of. Muhammad?

0033

1 MR. BARI: That's okay.

2 MR. BRITT: With that said. We've got
3 some people -- could you all introduce yourselves?

4 MR. RAYE: George Raye of the Colorado
5 River Indian Tribe.

6 MR. BILL SMITH: Bill Smith, I'm a member
7 of the Colorado River Indian Tribe.

8 MR. BINTER: My name is Felton Binter.

9 I'd like to make a statement. When you
10 said there was nothing found on the Ft. Irwin, I think
11 back to the time when the Mojave were Mojaves, but there
12 were several other tribes also included.

13 All of those thousands of people, and you
14 constantly go look into California and you find Mojave
15 pottery. You find it.

16 At the time of the mountains, you know,
17 when the trees were there, in that area there was
18 Mojaves.

19 MR. BRITT: We don't -- do not dispute

20 that.

21 MR. BINTER: You always look at people
22 forget, in most military establishments, no matter where
23 they're set up, there were strategic points. Mojaves
24 were there too.

0034

1 MR. BRITT: Sure.

2 MR. BINTER: So I say if you put something
3 on Ft. Irwin because you think it's safe from the enemy,
4 we've also been there at one point in time. Maybe it's
5 under the gun, but I truly believe there is.

6 I've been in the Ft. Irwin area -- not Ft.
7 Irwin, but Barstow area -- and I've worked for Howard
8 Pump Company for several years, so I've been out there,
9 so I kind of have a little difference of opinion from
10 yours.

11 MR. BRITT: Let me clarify something,
12 because I think I know what you're going at.

13 We're talking about NAGPRA items, not --

14 MR. BINTER: You may put it lightly, what
15 you say, but we don't take it lightly. That's what I'm
16 saying.

17 MR. BRITT: Okay.

18 I would like to clarify for the record,
19 what I'm talking about here are just NAGPRA items, and
20 those are human remains and associated funerary items.

21 There are many, many, many; we've got a
22 thousand of sites documented at Ft. Irwin, archeological
23 sites or cultural sites. I want to make sure that's
24 clear for the record.

0035

1 Yes?

2 MR. CHAD SMITH: About five miles south
3 of the powerline expansion area, Cronies Lake there are
4 numerous Mojave cremations, some of which were dug up by
5 Malcolm Rogers, even back in the twenty's and thirty's,
6 and the nature of the funerary practices are such that
7 often the remains don't stay intact, but items within
8 the playa, in particular the small stone beads that now
9 are at The Museum Of Man will, of course, be NAGPRA
10 items.

11 And it's hard to separate out within the
12 culture the importance within the culture certain other
13 items that archeologists may say are every-day
14 utilitarian items, broken pottery, yet the pottery was
15 broken, or corn grinder, metate or mortar were broken at
16 the time of the demise of the person who it belonged to,
17 and threw in the fire with them.

18 And so -- then the other thing is on the
19 undetermined cultural affiliation, most tribes, I think,
20 feel that it had to be related to some present day
21 Indian, and if you follow the NAGPRA, that the oral
22 tradition had to be a line of evidence with equal in my
23 opinion even greater validity than the scientific or
24 archeological determination of cultural affiliation,

0036

1 when it said within the cultural that that's Mojave
2 land, and once there were Mojave people there, we like
3 to work towards where what is right is done by those
4 ancient people, so we look to see in the comprehensive

5 agreement such things addressed as -- I don't want to
6 say like tie goes to the runner or to the Indian tribe
7 it concerns, but it's really a nationwide issue both on
8 and off military establishments about these
9 unidentifiable human remains.

10 MR. BRITT: Sure.

11 MR. CHAD SMITH: And I, too, have some
12 concerns about the expansion proximity to known
13 cremation grounds and Cronese.

14 And to me it seems strange that within the
15 thousand square miles there has not been encountered
16 human remains present or -- I think that some of the
17 sites quite possibly that have or would be considered
18 thermal affected rock, and that's all that's left now a
19 thousand years or more after a cremation took place, and
20 in some way some of the tribes I think were more
21 fortunate that their funerary practices are such that
22 there's not intact graves like up in the Anasazi area
23 where looters can get in there and get pottery out
24 that's intact because the on-purpose destruction through

0037

1 the cremation process of the belongings of the
2 individual were such that it doesn't leave a trace --
3 like the old saying, the Spaniards didn't see the
4 Indians when they came through the countryside so there
5 were no Indians there.

6 But our ancestors were up on top of the
7 mountain watching them come through.

8 So I think that there is natural stuff out
9 there aplenty.

10 MR. BRITT: I don't dispute that, but just
11 what has been done to date is they have not recovered --
12 I do -- I think both of you gentlemen made some very
13 good points.

14 Those are the types of information that we
15 want to include in the comprehensive report. The things
16 that aren't listed explicitly in NAGPRA.

17 All they are are legal definitions in law,
18 and that's what the government and the Army is -- they
19 have to follow this.

20 If we can expand upon those, the types of
21 treatment, what are items that you consider significant,
22 what are funerary items, what are NAGPRA items, what
23 are, you know, these other types of items, if we can get
24 those and put those into the Comprehensive Agreement it

0038

1 strengthens it for both parties because then we know
2 what to look for or what may not have been potentially
3 identified as a NAGPRA item, now it can be.

4 So it's, you know, it's a good situation
5 and those are some good comments, and I appreciate it.

6 Yes, sir?

7 MR. HORALEK: If I could follow up on
8 what you said, we have a handful of archaeologists that
9 have done a fair amount of work so far, but we have
10 thousands of troops going through there, literally
11 daily, and at this point we have nothing to show them
12 that would give them an indication, if they saw
13 something what they were looking at.

14 Anything that you could provide us would

15 help us to be able to train our soldiers and so forth to
16 be able to identify items of this type, would help us as
17 well as you.

18 MR. BRITT: Good point.

19 MR. BARI: The surveys we have done is we
20 have not gone, even from the tribal point of view, is
21 areas more than 50 percent slope, I guess.

22 MR. BRITT: That's a good point.

23 MR. BARI: so the slope up to thirty
24 percent and higher, everything, whatever is there, is
0039

1 intact.

2 MR. BRITT: Sure.

3 MR. BARI: Nobody has gone there, so maybe
4 that's where we have not seen anything, and we would
5 like to, if we don't have a business we will not
6 include it.

7 MR. BRITT: That's a good point. Most of
8 the training is constrained to the valley floors.

9 Much of the upper, higher elevations that
10 may have been exploited by your ancestors previously
11 would have been maybe higher elevations, another good,
12 key point to understand is that not just anybody can
13 come out to Ft. Irwin.

14 They're soldiers, they are briefed when
15 they come in about what cultural resources are. Last
16 year we did -- showed a video of the briefing of what
17 they're exposed to, the proper notification process.

18 A key point is that if you compare Ft.
19 Irwin to BLM land where anybody can come down there at
20 any time, we're much better stewards of the land there,
21 so that's -- that's something to keep in mind too; it's
22 all kind of relative.

23 Air Force bases are probably the best,
24 they have landing strips and they have big buffer areas,
0040

1 and they're restricted areas, nobody can go out there.

2 But, you know, we're -- we're doing --
3 somewhere in between, probably a little bit higher, so
4 it's something to consider.

5 We can pause for a minute. Do you have
6 any more questions? And then we'll turn it over to
7 Paige, and she'll talk about comprehensive agreements.
8 Can we do that?

9 MS. PEYTON: Sure.

10 MR. BRITT: Why don't we stretch our legs
11 and get something to drink? Thank you.

12 (Recess)

13 MR. BRITT: Folks, if we can get you all
14 to take a seat we'll resume our meeting.

15 Folks, we've got some ice tea back here
16 that they all brought in if you would like to help
17 yourself. We've got plenty of time.

18 Before I turn it back over to Paige, who
19 is going to talk about Programmatic Agreements, just a
20 couple of housekeeping things.

21 In the morning we'll have breakfast
22 provided in here and a full lunch provided in here.

23 So keep that in mind. I think they bring
24 it in like 8:30.

0041

1 MS. SHORE: 8:15, I think.

2 MR. BRITT: 8:15, they'll be ready.

3 We'll resume our meetings at 9:00, and at 11:30 we'll
4 take a break for lunch, lunch will be provided here --

5 I would like to bring to your attention,
6 you know, the agenda that's given out and, you know,
7 what the Army wants to talk about here, but I really
8 want you, if you could take a minute and think about
9 what issues are we not bringing up that you really want
10 to discuss, we don't have to bring it up today; just
11 think about it, and if there is something, we certainly
12 have plenty of time, either later this afternoon or
13 tomorrow to discuss those issues, because we really want
14 to hear what you have to say.

15 So think about that. Yes, sir?

16 MR. KANE: I'd like to know if you have
17 been out in the field working. Or, you know.

18 MR. BRITT: Yes, sir, I've been to Ft.

19 Irwin, I've been out in the field.

20 MR. KANE: And you haven't identified
21 anything, or you haven't looked? Or --

22 MR. BRITT: I'm -- let me, let me kind of
23 clarify what my role is in here.

24 I assist Ft. Irwin in providing

0042

1 archeological, cultural resource contractors to go out
2 and do these investigations.

3 MR. KANE: Okay.

4 MR. BRITT: My role is to make sure that
5 they do what they're supposed to do, so yes, I get out
6 there in the field, but I'm not out there on a
7 day-to-day basis.

8 I do review the reports and make sure that
9 they are sent out to everybody for review I guess I'm
10 kind of a manager.

11 MR. QUILLMAN: I'm Mickey Quillman,
12 I'm the Natural and Cultural Resource Manager. We do
13 have an archeological staff on-site, we just completed,
14 I think three years ago, Bari now, we completed a
15 state-of-the-art curation facility. We have gone out
16 and recorded close to a thousand different sites, be
17 they chipping stations or rock quarrying sites or --

18 MR. BRITT: Rock shelter.

19 MR. QUILLMAN: Rock shelter.

20 MR. BRITT: Rock art.

21 MR. QUILLMAN: Petroglyph sites, there's
22 a whole myriad of things that we've gone out and
23 identified, and we continue to look.

24 MR. KANE: So you picked some items out

0043

1 of some?

2 MR. QUILLMAN: It depends on what we see.

3 Our preferred alternative, preferred option would be to
4 record what's there and leave them in place, but if the
5 Army is going to out there conducting missions or where
6 they're actually doing live fire or something like that
7 or if they're going to construct a building, we'll clear
8 the sites, we'll document them according to the federal
9 regulations according to A 106, and those items are then

10 curated within the cultural resources curation facility
11 at Ft. Irwin.

12 What we were talking about earlier is
13 we've not found any traditional NAGPRA, human remains or
14 funerary objects that we know of.

15 MR. KANE: Okay.

16 MR. BRITT: But there are many, many
17 cultural sites out there. The big difference is are
18 they related to a human burial or a funeral practice or
19 are they just a cultural site? So I want to make sure
20 of that distinction. They can be one and the same, but
21 they're treated differently if they are a funeral site.

22 MR. BINTER: I heard that, treated
23 differently, they are -- this man said we identify. How
24 does one interpret that, then?

0044

1 MR. BRITT: Sir?

2 MR. QUILLMAN: We identify the type of
3 sites. We don't try to pay attention --

4 MR. BRITT: There's probably forty
5 different types of sites that we try to categorize what
6 we find, we -- what we want to do is characterize and
7 understand the nature and extent of the site so that
8 appropriate consultation and protection can be
9 implemented.

10 MR. BINTER: Okay.

11 Another question is: How does one, after
12 they've identified, how does one start to identify, do
13 you see what I'm saying?

14 MR. BRITT: How does one identify a site?

15 MR. FELTON: I know you're wearing brown
16 shoes because I saw you wearing brown shoes. How do I
17 know it's you?

18 MR. BRITT: I understand.

19 We follow the guidance and the legal
20 requirements that the Army is mandated to follow.

21 The purpose, again, of these meetings, is
22 to partner with the nations so that if we're not doing
23 something -- I'll be the first to admit, I could not go
24 out and identify a traditional cultural property. I'm

0045

1 not trained in the ways of the Mojave or any other group
2 to recognize a special place and its significance.

3 I'm trained as an archeologist to look for
4 artifacts and material and cultural features that are
5 left by prehistoric and historic peoples.

6 I don't presume to be a specialist in
7 those items that aren't -- that I'm not trained for.

8 That's why we want to work with the Indian
9 communities to help us identify those sites and places
10 so that they can be protected and preserved.

11 That is our purpose here, is to work with
12 the tribes.

13 MR. BINTER: I understand that, okay.

14 Now, another question.

15 When you do find and you do identify, you
16 identify with the nearest tribe, what tribe would that
17 be in your immediate area?

18 MR. BRITT: We don't identify with the
19 nearest tribe, we identify with a growing list of

20 tribes.

21 There are 14 that I mentioned earlier that
22 are federally recognized. And we don't show preference
23 or deference to any one particular tribe.

24 All of the reports -- last year we invited

0046

1 thirteen tribes; we had three tribes show up, but they
2 didn't only get this report.

3 Every single tribe that we invited got a
4 copy of this report, got a copy of the transcripts, got
5 letters of invitation, so that no tribe is left out.

6 For some reason they couldn't attend,
7 that's not our fault, you know, that's not their fault,
8 they still should be afforded the opportunity to comment
9 on what we said and what we're going to do. We will
10 continue to do that.

11 There are eight or so tribes that aren't
12 represented here today. They will be -- That's why we
13 have the stenographers here, they're going to share that
14 information with those tribes.

15 MR. BINTER: Okay.

16 MR. BARI: Would you -- can we go see
17 those objects or do we keep them, and we do follow A-106
18 process, and send letters to the tribes and everybody.

19 MR. GUNDRUM: Sure. We do follow section
20 106, if we have an undertaking, a survey.

21 One thing I wanted to say before that
22 we're talking NAGPRA items, we do not feel at Ft. Irwin
23 that we have NAGPRA items in our collection right now,
24 but, really, we need the cooperation and participation

0047

1 of the tribes here in the room and tribes that are
2 affiliated, and to identify those items.

3 So it's not Ft. Irwin's policy to collect
4 a large quantity of artifacts and amass a large
5 collection, you know.

6 That's -- that's one of the things, we
7 have our facility, and our artifacts, this list should
8 be made available to the tribes to see what items we
9 have in our facility to see if they feel that there are
10 any NAGPRA items in our facility, and then we can go
11 about repatriating those items that need be. I just
12 wanted to clarify that.

13 I mean that's one of the things, you know,
14 of this meeting, is to find out what items you feel fall
15 under NAGPRA.

16 We cannot say that, you know, as an
17 archeologist I cannot, and that's what Tad is saying, we
18 cannot say for sure what is a NAGPRA item and what is
19 not. That's where we need your assistance, and we
20 appreciate that.

21 MR. BRITT: Our training is limited to a
22 certain degree, and that's why we're coming to you to
23 help us understand our collections and what we're
24 looking at.

0048

1 MR. CHAVEZ: Those artifacts that you
2 possess at this time, I understand that it was -- they
3 were removed from areas that were disturbed or were
4 potentially going to be disturbed? Is that what you

5 were saying in the collection that you have?

6 MR. BRITT: Darrell, I don't mean to put
7 this on you, but you know more about the collection
8 policy.

9 I think what we do when they find a site,
10 they do take a representative sample of all sites
11 regardless of whether or not they're going to be
12 disturbed.

13 And I believe that practice has changed
14 over time. For instance, I know the BLM has a
15 no-collection policy. That may be best for them.

16 At Ft. Irwin it's not the best practice
17 because they're training all over this area, and if --
18 every time you get a rotate -- troops come from all over
19 the US to train here, and every time the troops come in
20 they're briefed on what a cultural resource is.
21 Everything from debitage to pottery shards, if they do
22 their job and they find something, they're obligated to
23 notify.

24 Many times what Darrell and his crew and
0049

1 the contractors will do beforehand will clear those
2 areas, they'll make a collection, whether it's typically
3 not a hundred percent collection, but it's a collection
4 of a sample of -- representative sample of those
5 artifacts so that they can determine function, age,
6 possible hopeful affiliation from those artifacts, and
7 they collect a representative sample. That's the
8 standard policy as it is today.

9 Correct me if I'm wrong, but that's --

10 MR. GUNDRUM: The general policy is
11 preservation in place, but due to the nature of the
12 training at Ft. Irwin and the mission, sites are going
13 to be impacted unless we can identify them from the
14 national registry.

15 So what we do when we find a recorded site
16 is try to gather that data that we need to make it
17 available to see if it's significant or not, that's one
18 of the things that we do, the consultation, is to notify
19 you of areas we're looking in, what our intention is
20 during our survey and inventory process, and then to
21 provide you with draft copies of the reports for
22 comments.

23 As we want to know, are there traditional
24 cultural properties in these areas. Are you considering
0050

1 certain sorts of resources as significant or more
2 important?

3 MR. CHAVEZ: I have --

4 MR. STEINER: I'm sorry, I can't hear him.

5 MR. BRITT: I'm sorry. Could you address
6 your question this way, just so everybody can hear.

7 MR. CHAVEZ: I'm talking to him.

8 (Laughter)

9 MR. CHAVEZ: I have two questions. First
10 of all, what is a significant collection from a specific
11 area? How much is that?

12 That's -- what is it? You're not telling
13 us. Is it a hundred pieces, twenty pieces, one piece?

14 MR. GUNDRUM: It would vary.

15 MR. HORALEK: Before you get started, of
16 that thousand sites you're talking about, how many of
17 these are rock chip sites?

18 MR. GUNDRUM: About 46 percent right now,
19 production are lithic sites that we recorded at Ft.

20 Irwin, 46 percent are what we would classify, as the
21 archeologist says, stone tool making lithic production.

22 MR. CHAVEZ: That could vary from actual
23 tools to lithic scatter, right?

24 MR. GUNDRUM: Yes, you could have
0051

1 projectile points, you could have bifaces, but mostly
2 the kinds of artifacts you're finding on these sites are
3 the debitage, the waste rock that are produced in stone
4 toolmaking. And it depends on the research.

5 MR. CHAVEZ: I'm still a little vague on
6 that, because you say reductions, a core rock is still
7 part of a toolmaking.

8 MR. GUNDRUM: Sure.

9 MR. CHAVEZ: It's part of a culturally
10 significant piece of rock, so what determines whether it
11 is an actual site versus that -- I mean in that 46
12 percent? What kind of tools are you talking about?

13 MR. GUNDRUM: Two different questions, I
14 guess, what constitutes a site?

15 MR. CHAVEZ: Right. In your way of
16 thinking.

17 MR. GUNDRUM: Our site definition criteria
18 were established by Claude Warren in the mid-1980's and
19 this is what we found effective in the Mojave Desert,
20 where Ft. Irwin occupies is basically twenty artifacts
21 within a ten meter radius.

22 MR. CHAVEZ: What kind of Indian was he?

23 MR. GUNDRUM: I know the point you're
24 making, that's why we're here to work with you.
0052

1 MR. CHAVEZ: Okay. The second point, it
2 sounds it like when these troops come in you're using
3 different terrain every time they come out.

4 LT. COL OGDEN: Not necessarily true

5 MR. CHAVEZ: Well, then, my second
6 question to -- that second question would be why is --
7 why are more artifacts coming in when you are using the
8 same terrain?

9 MR. GUNDRUM: Two different -- two
10 different processes are happening at those. One is we
11 have an ongoing, sort of section 110 responsibility, to
12 inventory our installation.

13 MR. BRITT: The entire installation.

14 MR. GUNDRUM: For cultural resources. The
15 other aspect of that is Section 106, is we are
16 responding to a specific undertaking such as the
17 installation of a fiberoptic cable line, that specific
18 projection project, so we're doing both, we contract
19 that work out.

20 MR. CHAVEZ: That's civilian, right?

21 MR. GUNDRUM: The staff -- Mickey is the
22 GS employee and the archeologists are both civilian
23 contractors and we do contract out large scale projects
24 at Ft. Irwin and the staff that I work with and the

0053

1 staff that we have in-house, we do smaller projects
2 because they are a limited number of people.

3 MR. CHAVEZ: I can understand that part
4 about it, when it involves contracts and subcontractors
5 and whatnot, when you're doing a specific project,
6 construction, but my point is: When the troops come in
7 it seems to me if these artifacts are going to continue
8 to come in from troop activity, that you guys are
9 utilizing different terrain, because if troop activity
10 is mentions specific terrain that would have already
11 been mapped, and if somebody calls you up and says,
12 "Hey, look at this tool out here," you would already
13 have that cleared, why would you go back out?

14 MR. BRITT: Well, because they don't pick
15 up a hundred percent of the artifacts.

16 MR. CHAVEZ: That's where I'm
17 misunderstanding, you would have already collected from
18 a specific area, why would you want to go back out and
19 collect again?

20 MR. GUNDRUM: Two different things. One
21 is of all of the area at Ft. Irwin, right now we have
22 about thirty percent of the area inventoried for
23 cultural resources.

24 That leaves 70 percent of the base that
0054

1 has not been surveyed for cultural resources.

2 The Army still trains on that land, and we
3 are operating under a 1981 MOA with the California
4 SHPO advisory council to operate as an installation, to
5 conduct military training on that land.

6 It doesn't require Ft. Irwin to have all
7 of that surveyed. That is our goal, to survey that as
8 quickly as possible, so we know that we have. There are
9 areas out there that we train on every year that we
10 don't know if there's cultural sites there or not

11 MR. CHAVEZ: Okay. On that, you say you
12 need -- you guys don't do in-field analysis. Well, you
13 have already done laboratory, I assume, analysis of some
14 artifacts.

15 What difference would it make to do an
16 in-field versus a lab once you have already done a lab
17 and the artifacts are pretty much the same out there
18 across the land, why would you want to go and keep doing
19 those?

20 MR. BRITT: Well, there are lots of types
21 of analysis.

22 MR. CHAVEZ: When you have already data
23 core of such artifacts in your data bank, and you could
24 compare out there and do a field analysis?

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1 MR. BRITT: Well, there's a lot of
2 specialized analysis that we're doing now, for instance
3 obsidian, hydration, a lot of scientific analysis, X-ray
4 diffraction, so that we can determine the elemental
5 compositions of these stone tools and see where they
6 were traded from.

7 You can't do that in the field. You
8 couldn't do that ten or five years ago because the
9 technology wasn't there.

10 MR. CHAVEZ: I know, but you don't need a
11 large amount.

12 MR. BRITT: I understand, but again,
13 you're bringing up some very good points. What I want
14 to do is get back and let Paige have her presentation
15 and we'll come back and revisit this collection practice
16 later this afternoon.

17 Again --

18 MR. CHAVEZ: Okay.

19 MR. BRITT: If we could do that. Thank
20 you. Sir?

21 MR. CHAD SMITH: Tad, one other key point,
22 that some of these sites, when they are encountered and
23 a few of the items are collected from the site, make a
24 representative sample from that site and there's hardly

0056

1 anything left, is what we call -- what archeologists
2 call artifact regeneration that as time goes by, a year
3 later, and a sand dune blows away a little bit and new
4 artifacts come to the surface of the site over time.

5 MR. BRITT: Sure.

6 MR. CHAD SMITH: Also, when people walk
7 across that site and break the crust with a vehicle
8 you're going to see artifacts on sites that have been
9 picked clean five years later or two years later, so
10 there is an ongoing regeneration which some of us think
11 points to a more plentiful amount of artifacts and even
12 cultural strata within some of these sites, as I'll get
13 into later, that might be determined not eligible for
14 the national register based upon a few shovel tests or
15 what is on the surface.

16 MR. BRITT: Those are good points.

17 MR. CHAVEZ: Another point could be added
18 to that, in the event weather changes and environmental
19 changes and erosion of property and land -- I mean land
20 and soil, and troops marching across it, can eventually
21 expose an item which you would not see in an initial
22 survey.

23 MR. BRITT: That's called an inadvertent
24 discovery.

0057

1 That's why we have the standard operating
2 procedures for ceasing activity at that location,
3 everything that's outlined in that handout and having a
4 comprehensive agreement signed between the two nations
5 so that we know -- so that not only the Army addresses
6 it in the best manner it knows how, but through
7 consultation with the native Indian tribes we're
8 respecting their lives and property as well.

9 MR. GUNDRUM: And I might add that's where
10 you need to work closely, identify those NAGPRA items,
11 you know, and in all of our infinite wisdom and training
12 say what is an item and what isn't.

13 Really, it's up to your individual tribes
14 as a nation to tell us what is significant to you, so
15 until those items are identified the things that I would
16 see as an archeologist, would be human bones, things
17 from epigraphic records --

18 MR. BRITT: Beads.

19 MR. GUNDRUM: Beads, things, the historic

20 counts that would tell you might be trade goods, but
 21 that's sort of the insider knowledge that you have.
 22 That would be we need to know, to see what
 23 other items are there, and that's where we hope these
 24 sort of meetings and comprehensive agreements can help
 0058

1 us identify those items.

2 MR. BRITT: Thank you, Darrell.

3 What I'd like to do now is turn it over to
 4 Paige, and she's going to talk about Programmatic
 5 Agreements, what they are and what they aren't.

6 The key point here is that ultimately we
 7 would like to have two documents signed with each of
 8 your respective nations. One is a Comprehensive
 9 Agreement that deals only with Native American graves,
 10 the NAGPRA finds that its funeral -- burials and
 11 funerary items and everything else would be subsumed
 12 under this Programmatic Agreement.

13 That's a key point. There are two
 14 separate documents. They're both -- in both parties
 15 best interest to be able to agree on these things.

16 With that I'll turn it over to Paige.

17 Thank you.

18 MS. PEYTON: Thank you.

19 Well, I don't have that wonderful resonant
 20 voice that Tad has, so if you don't understand me or
 21 hear me, just let me know and I'll slow down or repeat
 22 myself.

23 I am here to describe to you what
 24 Programmatic Agreements are and what they aren't, what
 0059

1 they look like, kind of walk you through what one looks
 2 like, and hopefully describe the difference between
 3 Comprehensive Agreements and Programmatic Agreements.
 4 Cultural resource managers have lots of
 5 tools. So many tools sometimes even we get confused.
 6 I'm sure some of you are familiar with the statutes and
 7 regulations that we deal with on a daily basis. They're
 8 really confused about what all these different pieces
 9 are.

10 We have comprehensive agreements, we have
 11 memorandums of agreements, we have programmatic
 12 agreements. What's the difference between all of these
 13 things? And there are definitely differences.

14 The comprehensive agreement which Tad has
 15 just described to you, are specific to NAGPRA. That's a
 16 very specific law.

17 It has very specific implications, it has
 18 very specific drivers, it has very specific authorities,
 19 and in general NAGPRA, the consultation with NAGPRA and
 20 the agreements that go along with NAGPRA are focused on
 21 consultation with Native American groups, tribal nation.

22 Programmatic Agreements, on the other
 23 hand, the focus for when the law was written back in
 24 1966, is focused more on the consultation with 106 in
 0060

1 consultation with the State Historic Preservation
 2 offices.

3 So there's a different driver kind of
 4 between these two.

5 What Programmatic Agreements are, is
 6 they're an alternative process to section 106, they're
 7 kind of a short circuit.

8 The section 106 process, everybody in this
 9 room probably knows it can get rather complicated
 10 sometimes.

11 It can -- if you go on a step-by-step
 12 bases, it can be confusing, it can be protracted, it can
 13 take a while to understand it and what's going on, so
 14 the formulators of the National Historic Preservation
 15 Act came up with the concept of an agreement document,
 16 Memorandum of Agreement and Programmatic Agreement,
 and
 17 Programmatic Agreements are used for very specific
 18 circumstances.

19 They're used for things that happen a lot,
 20 over and over and over and over, and as an example, if
 21 you had a big historic district and you had lots of
 22 buildings in it and you lived in Tornado Alley, well,
 23 you may frequently have windows break in that building,
 24 so instead of consulting with SHPO every single time you
 0061

1 had a window break you would develop a Programmatic
 2 Agreement, and then any time the window broke you
 3 wouldn't have to go back to SHPO and consult, which
 4 would be a case-by-case basis.

5 The Programmatic Agreement helps
 6 streamline the process, so you can use some force
 7 similar to repetitive or routine types of activities,
 8 you can use them for a potential effect from historic
 9 properties that you can't really know about until the
 10 project gets started.

11 Some of those are more often than not
 12 vague, really, really large projects that you want to
 13 test a new airplane and the airplane was going to fly
 14 with a new speed at a new altitude and create noise that
 15 you weren't -- noise levels that you weren't used to and
 16 it was going to cover a multi-state area, it would be
 17 very difficult in a multi-state area to identify every
 18 single site within it.

19 So you come up with Programmatic
 20 Agreements or stipulations within the Programmatic
 21 Agreement that help you figure out exactly what you're
 22 going to do if in fact something happens.

23 So circumstances that you can't really
 24 fully understand before the undertaking takes place is
 0062

1 another good place to use Programmatic Agreements.

2 There's probably thousands of other
 3 circumstances that Programmatic Agreements would be
 4 appropriate for, so they put the other caveat in there
 5 if there's other -- some sort of other departure from
 6 the normal 106 process, the normal case-by-case process,
 7 then we have a little caveat in there saying we can use
 8 Programmatic Agreements for those too as long as all of
 9 the parties agree.

10 What Programmatic Agreements are not,
 11 they're not the same as Comprehensive Agreements as we
 12 just discussed.

13 The Comprehensive Agreement is specific to

14 NAGPRA. The Programmatic Agreements are specific to
15 section 106 and the other regulations that we so
16 frequently come upon.

17 We just discussed Comprehensive
18 Agreements. Tad just described to us what their drivers
19 are: Specific objects, sacred objects, typically they
20 are -- they have plans of action that are associated
21 with them.

22 The Programmatic Agreements, which
23 typically have what I'll say are standard operating
24 procedures and protocols, the same thing as kind of like
0063

1 are augmented to the hard part of the document.

2 Once again the focus for the Comprehensive
3 Agreement is consultation with you, the Native American
4 groups, those typically with Programmatic Agreements
5 under SHPO.

6 This doesn't mean that consultation --
7 when the Programmatic Agreements -- this doesn't mean
8 that consultation doesn't occur with the tribes, it
9 does, but under NAGPRA there is no consultation with the
10 SHPO, only the advisory council, that's the strong
11 difference.

12 MR. CHAD SMITH: I want to emphasize with
13 the advisory council, only the historic preservation
14 because recently Nevada BLM and some other places have
15 snuck Programmatic Agreements through without the advice
16 or consent of the advisory council and historic
17 preservation.

18 And under the new regulations of section
19 106, the advisory council can opt out of being an active
20 signatory, a party to these Programmatic Agreements, and
21 often there's two types: There's one for procedural
22 matters, the paperwork shuffle, like federal highways
23 will delegate to California Department of
24 Transportation, some discussions on this are coming up
0064

1 next week at Temecula, that instead of when the
2 archeological survey report is prepared, it being sent
3 to the federal lead agency for its review and comments
4 coming back to Cal Trans about a highway project, and
5 then Cal Trans three months later sending that
6 archeological report after review and approval by the
7 feds on to the state historic preservation office, that
8 it's done simultaneously, that they send it to federal
9 highways and to SHPO at the same time.

10 The other type of Programmatic Agreement
11 is site specific or project specific, that like a gas
12 pipeline, like Kern River pipeline, part of which now is
13 going to become part of Ft. Irwin in the land expansion,
14 when they go to install that, the archeologists do their
15 survey and do their research.

16 They say "Okay, we've got 114 sites
17 between Nevada and Santa Barbara," or wherever, and for
18 all of those sites where the line's going to go through
19 within the site boundaries there's going to be
20 archeological excavation.

21 Then during construction -- Well, back
22 up.

23 During the archeological excavations

24 there will be Native American monitoring under the
0065

1 California Native American Heritage Commission
2 guidelines, and then during the ground disturbing
3 activities besides that that are constructed related,
4 the construction itself, there will be Native American
5 monitoring.

6 And it's really key that advisory council
7 be included because nationwide there have been several
8 instances, primarily under the Bureau of Land Management
9 Nationwide Programmatic Agreement that the advisory
10 council has been blind-sided on these P A's, we call
11 them, that have been negotiated with the state historic
12 preservation office, primarily in Nevada, and not have
13 the opportunity to comment.

14 And like I say, under the more streamlined
15 new section 106 regulations, then the advisory council
16 can say, "Well, we don't need to be a signatory to this
17 Programmatic Agreement," and usually tribes on the last
18 days on the concurring parties which give you all of the
19 weight and authority of a piece of furniture, really,
20 because in the new regulations it says that for a
21 Programmatic Agreements where sites could be affected,
22 or where tribes would have concerns, specific to those
23 sites, tribes could be a signatory party to the
24 Programmatic Agreements, not a concurring party, I mean
0066

1 they could be a concurring party if they don't want to
2 be a signatory party.

3 And then when these various government
4 entities and tribes and others that are into this
5 Programmatic Agreement, if there's a problem, they can
6 go on into dispute resolution or even terminate if the
7 dispute resolution doesn't work, the Programmatic
8 Agreement which really only throws it back into site
9 specific 106 consultations, which do take a lot of
10 time.

11 And the way it's often expressed is "Why
12 do a thousand different SHPO consultations when you
13 could do one overall consultation, you negotiate the
14 Programmatic Agreement, it's going to address all of
15 these issues for a program," like the management that
16 the military facility and cultural resource management.

17 And so it does speed things up, but I
18 think that in some ways people think it can be a
19 cure-all to projects and get them out of doing section
20 106, when really, I don't look at it as an alternative
21 to 106, it's a way to address adverse effect.

22 MS. PEYTON: Yes. It's kind of both.

23 I mean it is -- it's one of the tools that
24 can be an alternative to the 106 process, and that was
0067

1 the intent of it, was to try to streamline some of the
2 repetitive kinds of things that happened over and over
3 and over, so that there didn't have to be so many so you
4 didn't have to bog the process down, the council --
5 You're right, and the recent provisions with 106, or C F
6 R 800, the council has kind of backed away from so much
7 hands-on participation with some of these types of
8 consultations, so they have kind of opted to -- You know

9 -- you can invite them to be a participant in the
 10 Programmatic Agreement.
 11 MR. CHAD SMITH: You have to invite them.
 12 MS. PEYTON: Yes, I'm sorry, you have to
 13 invite them, but they don't have to be a participant,
 14 and depending on what the circumstances are, they
 15 typically will be a participant if it involves a very
 16 large program kind of issue, or if it involves something
 17 to do with national historic landmark, very typically
 18 they'll get involved with those.
 19 If it's a day-to-day basis small kind of
 20 issue, they typically will not be a concurring party.
 21 And what I have done here is I have --
 22 because these documents are difficult to understand
 23 unless you can see one, so on the back of your handouts
 24 I've made up one, and please remember that Paige just
 0068
 1 made this up, it's a made-up story. It's not specific
 2 to any installation or any specific type of issue, but
 3 so that you could see what a Programmatic Agreement
 4 looks like, and I'm going to show it to you on the
 5 slides also, but it's easier to see when it's laid out
 6 all together.
 7 So you will see some of the things Chad
 8 was talking about.
 9 I purposely had the council decide not to
 10 participate in this one, and there was no particular
 11 reason for that, it was just Paige's made-up story, and
 12 so it made the slide fit better, so the council wasn't a
 13 participant, but the council certainly can be a
 14 participant. Certain governments can be participants,
 15 state historical societies can be participants, and most
 16 assuredly Native American groups can participate.
 17 So all in all, Programmatic Agreements
 18 have -- can have a wide range of stipulations on a wide
 19 range of components but they all will have the -- some
 20 similar ones.
 21 And so this slide shows what you're going
 22 to typically see in a Programmatic Agreement.
 23 You may see more things, but the chances
 24 are we will not see less.
 0069
 1 And the obvious lines are title and date.
 2 That may sound intuitive, but believe it or not, I've
 3 seen Programmatic Agreement that don't have a title that
 4 matches what the contents are, so when you put
 5 Programmatic Agreements together you try to be cognizant
 6 of exactly what it is you're trying to present and who
 7 it is you are representing.
 8 So in this particular example, and we'll
 9 go through the example a little bit in detail just so
 10 that you remember now it's made up, just so that you can
 11 see how Programmatic Agreements lay out.
 12 So this one I have made up is the US Army,
 13 Ft. Rocky Road, Texas, which, of course, is made up.
 14 You can see I was hungry and thinking
 15 about ice cream. That's where that came from, and the
 16 Texas State Historic Preservation Officer and in
 17 addition here the Programmatic Agreement is about
 18 routine operation maintenance and development, types of

19 undertakings at Ft. Rocky Road.
 20 All Programmatic Agreements have what we
 21 call "whereas" clauses.
 22 And these are the things that people just
 23 understand from the beginning and everybody agrees to.
 24 You can have as many as -- Well, you'll
 0070
 1 have as few as three in this example, but you can have
 2 as many as twenty, whatever it takes to set out what the
 3 original ground rules are.
 4 This particular example "Whereas, US Army
 5 has determined that the operation, maintenance and
 6 development undertakings at Ft. Rocky Road may have an
 7 effect on properties that are eligible for inclusion on
 8 the National Register of Historic Places, or known or
 9 unknown archeological sites that may be eligible for
 10 inclusion in the National Register, and Whereas the Army
 11 has completed the identification requirements for all
 12 class of cultural resources at Ft. Rocky Road under
 13 sections 106 and 110 that the inventory has resulted in
 14 specific places of historic properties.
 15 Remember, this is made up -- two
 16 buildings, building 39 and 40, nine archeological sites
 17 and an archeological sensitive area, all of these could
 18 be potentially eligible for inclusion on the national
 19 historic register, everybody is agreed on that.
 20 MR. CHAD SMITH: You should define section
 21 110 for some of the folks here.
 22 That section 106 is where there's going to
 23 be a ground disturbing activity or licensing or
 24 regulation involved, and there could be an effect of
 0071
 1 some action on a cultural resource, and section 110 is
 2 the obligation of the land managing agency to know and
 3 maintain what cultural resources are on the lands that
 4 they manage.
 5 And often a Programmatic Agreement only
 6 addresses section 106
 7 MR. BRITT: Very good.
 8 MS. PEYTON: Thank you.
 9 And the last "whereas" is where I opted
 10 just the -- my particular example is to present the
 11 Programmatic Agreement to the advisory council. The
 12 advisory council has opted because of what we're doing
 13 not to participate, so their name is not in the title
 14 and they are not a signatory.
 15 Now, after everybody has agreed on the
 16 "whereases" now therefore, the people, who will be the
 17 signatories, in this case, the Army, Ft. Rocky Road and
 18 Texas SHPO, all agree that the operation, maintenance
 19 and development undertakings shall be administered in
 20 accordance with the following stipulations to satisfy
 21 the Army's responsibilities under section 106.
 22 This is kind of a segue between what
 23 everybody has agreed upon and what the stipulations
 24 would be.
 0072
 1 Most Programmatic Agreements will have
 2 some sort of exemption.
 3 This is part of the streamline process,

4 and exemptions include a wide range of things, but in
5 this particular case if you're not doing an undertaking
6 that's going to have any effect whatsoever on building
7 39, then there's no need to consult on.

8 So if you're going to build a building on
9 the north side of the base and building 39 is on the
10 south side of the base, even if it's a historic building
11 you're not going to have an impact on the building
12 whatsoever, so it's an exception.

13 On the other hand, if you're going to do
14 something to building 39 and you know it's historic,
15 there are certain kinds of exemptions that would
16 indicate that there's a point that you still don't need
17 to do any consultation, and these would be if you have a
18 historic building that has been renovated over the years
19 and there might be some elements in that building, maybe
20 the windows, maybe the roof, who knows what the element
21 is, but it's been changed out, it's not original, so
22 there would be no need to consult, you could change that
23 if you needed to, but there would be none because it
24 would not be original to it.

0073

1 Or routine kinds of things, maintenance,
2 you might have to paint it every three or four years and
3 you don't want to consult every time you want to paint
4 it, so you put a stipulation in there that we're going
5 to paint it, prepare the siding on the building, we're
6 going to use the same colors, and therefore we don't
7 need to consult every time.

8 Exterior landscaping is another good
9 example, these are just examples of the kind of things
10 that you can use to help streamline the process.

11 Okay. The same with archeological sites,
12 archeological areas, you could certainly most assuredly
13 be exempt if everybody had surveyed X area and everybody
14 agreed that there was no archeological sites there, then
15 there would be no reason for you to have to consult on
16 it again, if everybody had -- if everybody concurred, of
17 the concurring parties said that there is no archeology
18 and they agreed.

19 And similar to the building ones, you know
20 that there are sites there but everybody has determined
21 that they're not eligible.

22 MR. CHAD SMITH: If we were reviewing a
23 Programmatic Agreement that had this wording in it, I
24 definitely would insist that the word "Other" after
0074

1 "Native American groups," or "Other interested parties,"
2 the word "other" should be stricken because it relegates
3 tribes in the section 106 process to the status of
4 interested persons, the legal phrase, for interested
5 parties, and that's something we specifically commented
6 on in a Programmatic Agreement that Vegas BLM had
7 recently.

8 And so it should read "Native American
9 groups or interested parties," not "Or other interested
10 parties," because that conflicts with the
11 government-to-government consultation requirements.
12 That's often something that more and more you're
13 starting to see that, and it's really difficult.

14 MR. BRITT: I think that's actually in the
15 examples they give out.

16 MS. PEYTON: It is.

17 MR. BRITT: And you made a good point.

18 MS. PEYTON: Yes.

19 MR. CHAD SMITH: Does that come from ACHP?

20 MS. PEYTON: It does.

21 MR. CHAD SMITH: I'll have to talk to Alan
22 Stone and Phil about that.

23 MS. PEYTON: So now we have our exemption
24 section.

0075

1 Now we need the technical -- the technical
2 elements of it. What exactly is the Programmatic
3 Agreement going to do specifically? And there's only a
4 couple of examples here, and I'm not going to use many,
5 but there would be many more I could use as an example,
6 but I just picked two.

7 One is that you -- Ft. Rocky Road has
8 already developed their ICRMP, and they laid out very
9 clearly very specific procedures, how they're going to
10 do the archeology, and we're going to do incorporate
11 those specifics by reference.

12 The second one is we know that building 40
13 is determined eligible, we stated that in our
14 "whereases," and we know it needs to be demolished, but
15 the stipulation of this Programmatic Agreement is before
16 you can demolish the buildings you have to make sure
17 that you have it appropriately recorded, documented and
18 used Secretary of Interior standards.

19 So that's a very specific stipulation of
20 this particular Programmatic Agreement.

21 There's always a stipulation, Programmatic
22 Agreement, that are unanticipated discoveries.

23 We talked about these unanticipated
24 discoveries on the macro; these could be unanticipated
0076

1 archeological discoveries that are not NAGPRA specific.
2 That's the difference.

3 So there's always some sort of
4 unanticipated discovery stipulation in here.

5 There's almost -- Well, it depends on the
6 circumstance.

7 In this particular sample, an interim
8 protection statement, I've created an interim protection
9 stipulation, and it could be applied to a wide range of
10 circumstances, but I picked the building because we know
11 the building is going to be demolished, but until the
12 building is recorded, according to the standards and
13 according to our technical stipulation, we need to make
14 sure the building is protected because if we don't
15 protect it before it gets documented, then we've lost it
16 and lost the documentation, so an example of an interim
17 protection measure is that you have to make sure it's
18 water-sealed and keep the heat on in the wintertime, the
19 pipes don't freeze and that sort of thing, so the
20 building is inadvertently damaged.

21 Then there's always a series of
22 administrative-type stipulations.

23 You always want some kind of sunset

24 clause. Because you need -- you need to keep track of
0077

1 how you are doing, what the progress of your
2 Programmatic Agreement is, it's typically five years,
3 the typical duration. I mean it can be something that
4 you could agree on, six years, four years, three years,
5 depending on what the circumstances are, but they're
6 typically about five years before you relook at them and
7 decide whether you want to modify it, terminate it, all
8 of your obligations are fulfilled, or you want to extend
9 it for some time.

10 MR. CHAD SMITH: At that time would there
11 be contact with the advisory council?

12 MS. PEYTON: If they're a participant.

13 MR. CHAD SMITH: If they opted out and
14 signed the original PA, that they would receive
15 notification.

16 MS. PEYTON: Yes.

17 MR. CHAD SMITH: Of the renewal.

18 MS. PEYTON: Yes.

19 Notification for sure, and it gives them
20 the opportunity to, once again, if they decide that they
21 want to participate.

22 MR. CHAD SMITH: And, of course, at any
23 time when the tribe, for instance, approaches the
24 advisory council that they're having problems with
0078

1 Nevada BLM, for instance, they can take interest in a
2 Programmatic Agreement situation that they have opted
3 out of being involved in, which really makes you wonder
4 why they never had the opportunity to review the
5 original Programmatic Agreement and decide whether they
6 want it in or out.

7 I'll tell you, BLM is in hot water on this
8 transmission line. It's really a touchy subject, but
9 continue.

10 MS. PEYTON: Another stipulation is
11 monitoring and reporting.

12 This is also important to make sure that
13 everything is going on like you want it to go along, so
14 there's typically a clause for a yearly report, it comes
15 out towards the end of the calendar year and the report
16 goes out to everybody and lets everybody know how things
17 have been going with the carrying out of the
18 stipulations throughout the year.

19 And non-compliance, at any time any
20 signatory has the right to say, "You know what? I don't
21 think Ft. Rocky Road is doing what they're supposed to
22 be doing, and I think we need to amend the Programmatic
23 Agreement, or we need to have discussions," and at any
24 point a signatory can step forth and offer or suggest
0079

1 that there would be amendments to the Programmatic
2 Agreement

3 MR. BRITT: One of the ramifications of
4 doing that, say, if there was a large-scale survey going
5 on, would that cease the survey, the inventory?

6 MS. PEYTON: Not necessarily. It could.

7 MR. BRITT: Okay.

8 MS. PEYTON: It could, especially if it

9 became a dispute resolution.

10 MR. BRITT: Okay.

11 MS. PEYTON: If for some reason this was
12 in the issue of protocol, an issue of whatever, then any
13 party also has a right to step forward and say, you
14 know, "We don't think that this is going like the way we
15 want it to," so we would either need to terminate it or
16 amend it or consult, so we can get it resolved.

17 MR. BRITT: Let me rephrase my question.
18 Does it stop the 106 process? Or does it put the 106
19 process on hold?

20 MS. PEYTON: It would really be specific
21 to whatever the issue would be.

22 MR. CHAD SMITH: In a way it would be up
23 to the SHPO?

24 MS. PEYTON: I think it would be up to all
0080

1 of the parties. I don't think any party could say "You
2 need to stop the project."

3 MR. CHAD SMITH: If the SHPO said "We need
4 to hold off on this until this dispute is settled," and
5 the lead agency terminates consultation with the SHPO
6 per 36 CFR, as people had to do in the past, or have
7 done in the past for various reasons, then that lead
8 agency consults directly with the advisory council,
9 which -- can you back it up to eight?

10 MS. PEYTON: How do I do that?

11 MR. BRITT: Go up.

12 MS. PEYTON: Thank you.

13 MR. CHAD SMITH: It brings up that -- Yes,
14 in this stage, the dispute resolution under eight would
15 be just between the signatories, which I think are what,
16 the Texas Historical Commission?

17 MS. PEYTON: Right.

18 MR. CHAD SMITH: And Army.

19 MS. PEYTON: Right. And Ft. Rocky Road.

20 MR. CHAD SMITH: The particular Army
21 installation itself, which could turn into like with
22 Nevada a mutual admiration society where the SHPO says
23 "Well, we won't compel the federal agency to do
24 anything," and so -- and it's pretty standard in
0081

1 Programmatic Agreements that the advisory council has
2 opted out of being a participant or signatory, that in
3 this clause here that would say after what it says
4 there, if -- I don't know what the legal wording would
5 be, but if it's at loggerheads and the dispute cannot be
6 resolved between the parties, then it goes to the
7 advisory council to attempt to get the parties together
8 to resolve the dispute, and then it terminates, see,
9 which is -- some of the amendments to the regulations,
10 some of us have said -- if you will excuse the
11 wording -- that it neutered the advisory council on
12 historic preservation to a certain extent. It removed
13 much of its authority, and that was at the behest of the
14 national council of SHPO's, of the State Historic
15 Preservation Offices.

16 And it's still in the regs that the
17 advisory council can come back in at any time and take
18 this more active role, and all of the dispute

19 resolutions where the advisory council has opted out of
20 that PA should still include the wording that the
21 advisory council can come in if the parties cannot
22 resolve the dispute amongst themselves.

23 So I think right there it should have
24 reference to ACHP, being an arbiter, some arbitration
0082

1 or that, and again it would only put it back to the reg,
2 section 106.

3 MS. PEYTON: That's right. That's what
4 would happen if you terminate and the parties can't
5 agree, the council can try to help resolve the issues.
6 Otherwise it's terminated.

7 MR. CHAD SMITH: They're going to see it
8 anyways.

9 But also perhaps in the annual summaries,
10 the progress under the PA summaries, those are supposed
11 to go to the advisory council, as well as an update.

12 MS. PEYTON: Yes.

13 So it can terminate, as Chad said, and if
14 it can't be resolved, then the signatories notify all of
15 the parties, and then they try to consult to decide
16 whether they need to create another Programmatic
17 Agreement or amend the one that you already have,
18 whether you need an arbiter to come in and help you
19 resolve the issue. Basically that's it. I thought that
20 would help.

21 MR. CHAD SMITH: Yes. As she said, very
22 few Programmatic Agreements ever terminate or even reach
23 amendment or dispute resolution stage.

24 And a lot of these environmental impact
0083

1 statements, in a way the alternatives of the don't build
2 or don't expand the installation, they have to be in
3 there because of the way the National Environmental
4 Policy Act is made up or this the way the National
5 Historic Preservation Act is set up, but a lot of it is
6 legal wording that's in there that never really kicks
7 in.

8 But nationwide, there have been nationwide
9 Programmatic Agreements that have been terminated,
10 almost always by the advisory council, and historic
11 preservation, National Resource Conservation Service
12 Programmatic Agreement is one and I think soon to be the
13 Bureau of Land Management Nationwide Programmatic
14 Agreement that sets up the statewide protocols, kind of
15 like the MOA that Ft. Irwin has in place with the IPRP,
16 that can have excluded activities in it that --
17 Well, really Soil Conservation is pushing the envelope,
18 and going on ahead and dozing and the archeologists
19 worked out there surveying where the ground disturbance
20 happened, it was a nightmare.

21 And that's not what a Programmatic
22 Agreement should end up as.

23 MS. PEYTON: Programmatic Agreements truly
24 are, there truly was to help the process, you know,
0084

1 they're a selectable way to look at Section 106.

2 What you have to look at is when you

3 concrete a Programmatic Agreement you have to be careful

4 about what you say because you are basically
5 circumventing the 106 process.

6 You're not going on that case by case
7 standard procedure that you're used to. You have now
8 kind of created a new 106 process that is a little
9 different from what you standardly do.

10 You're doing that for a good reason,
11 you're doing that to try to minimize the amount of
12 consultation that you have, you're trying to make the
13 process move a little bit smoother, but you have to be
14 very careful about the stipulations.

15 You have to be very clear about what your
16 intent is with a Comprehensive Agreement, sometimes they
17 get too broad and that makes them very difficult to
18 enforce, to monitor, it makes it difficult.

19 MR. CHAD SMITH: Now Army and the advisory
20 council, and even some of us ourselves that have
21 invested, me a minimal amount of time and effort in
22 consulting, and working towards a nationwide alternative
23 procedure to the Section 106 document, Fort -- Army or
24 installation specific, the installation can opt in to
0085

1 the alternative procedures, which to me really is a
2 glorified Programmatic Agreement and a restatement of 36
3 CFR, and in the Army's cases 43 CFR, there's an Army
4 DOD equivalent that has the 43.

5 MS. PEYTON: 43 is NAGPRA. I don't think
6 there's another element of 43 that's the Army, but the
7 Army alternative procedure, though, I was going to talk
8 about in in my next to last slide just a little bit.

9 MR. CHAD SMITH: It's more comprehensive,
10 and I think it's really a good way to go, and it has
11 flexibility.

12 MS. PEYTON: It is, I'll just jump to that
13 slide.

14 There's really three ways that you can go
15 with Section 106. You can either go case by case, which
16 we all know is cumbersome and can take a lot of time and
17 is repetitive; you have your Programmatic Agreement
18 which is what we're talking about right here, which is
19 kind of the streamlining process, and then the Army has
20 now developed the Army's alternative procedures, and
21 that basically becomes historic preservation component
22 of the I group.

23 There are two currently that I know of
24 Army installations that have adopted the Army's
0086

1 alternative procedures, Ft. Stewart in Georgia, and they
2 are actively pursuing that process and they're pretty
3 well on their way, and they're kind of like pilots which
4 would eliminate the case by case section of 106 and also
5 eliminates the need for the Programmatic Agreement if
6 you install within the ICRM the historic preservation
7 component that outlines all these stipulations. It's
8 kind of new, innovative, the concept is not new, but the
9 Army is leading the forefront here with adopting these
10 procedures.

11 And I think ultimately it may be the way
12 that many Army installations go. It's cleaner, it's
13 right there, I mean it's tailored to exactly what the

14 particular installation is doing, and it takes out some
15 of the ambiguities and some of the complexities of the
16 case-by-case situation and eliminates having to create
17 Programmatic Agreements.

18 MR. CHAD SMITH: I see a lot of similarity
19 there to the SHPO substitutions by tribes who become
20 tribal historic preservation offices, and, you know, to
21 have a tribal version of Section 106 themselves, and
22 it's not by accident that both places are called
23 reservations, you know.

24 And the people at Ft. Dietrich, Lee Foster
0087

1 and then Dave Herwith with the advisory council, they're
2 -- they're really good at what they do, and I think they
3 -- if you went by weight, the alternative procedures
4 is --

5 MS. PEYTON: The winner.

6 MR. CHAD SMITH: -- very comprehensive, I
7 mean it's legalese, and that, and I think it does
8 streamline things as far as SHPO. SHPO reviews one time
9 the alternate procedures, and then they give a summary,
10 I think every year.

11 MS. PEYTON: Every year.

12 MR. CHAD SMITH: Just like the Secretary
13 of Defense and the Secretary of Interior on 106, 110
14 projects within the year and then the couple of meetings
15 that I've been to with them, they're quite open to
16 greater involvement by tribes in the process as well,
17 and they've got the wording right in there too, and then
18 it references NAGPRA as well.

19 MS. PEYTON: Exactly. And then usually
20 because of the component, a certain component of your
21 ICRM, then every five years it gets a real hard review
22 and if things change you update.

23 So you have it all encapsulated, so I
24 think and that's probably more a way a lot of our
0088

1 installations will go.

2 If you're interested you can look at Ft.
3 Sam Houston website, they actually have it posted on the
4 Website.

5 MR. CHAD SMITH: Now, installation,
6 mid-level managers and the grunt right down there in the
7 field and uses the ICRM as a working document rather
8 than first this Programmatic Agreement thing that we
9 have for this and that, and it becomes more -- in their
10 opinion and my opinion -- of a living, working tool.

11 MS. PEYTON: It does. As a matter of
12 fact, a lot of the installations apart from what we're
13 discussing here, but a lot of installations are now
14 going through -- I think it is; also, anybody can tap
15 into that web base and see what culture resources is all
16 about, all of the way from ICRM coming into one
17 particular mission to people who work on installations
18 on a daily basis, they are frequently interactive, click
19 on an archeological site you might be able to determine
20 what it's made up of or what the architecture is.

21 MR. CHAD SMITH: And a specific project or
22 specific undertaking, like on the anti-terrorism, it's
23 not convenient or feasible, and a regular 106 would work

24 better, the installation can pop back out of the
0089

1 alternate procedures undertaking specific, you know,
2 particularly if it's something like changing radios in
3 Humvees or something like that, you know, that's an
4 exclusion, and you just go back to 106 and say, "This is
5 -- this does not have any potential to affect cultural
6 resource," it's not an undertaking.

7 MS. PEYTON: Though there'll probably
8 always be occasions to continue to use the cumbersome
9 106 process, I hate to say it's cumbersome, but it is
10 because we don't know what's going to happen, we don't
11 know what kind of new missiles, weapons whatever that's
12 going to come in that might have none of these
13 stipulations will fit, so the Section 106 process is
14 always our fallback.

15 What we're trying to do is for things we
16 know are going to happen repetitive, or things that we
17 do on a routine basis, these Programmatic Agreements,
18 these procedures, help us get through them, this is what
19 it's about.

20 Just a word about the antideficiency act.
21 Everybody has the intention of going on some of these
22 projects, but the bottom line is that the Army doesn't
23 have the money to fund them.

24 Ft. Rocky Road can't do it and so I'm
0090

1 trying to stick with Ft. Rocky Road here and so there's
2 times when even in your best intentions you have things
3 laid out and you have planned it and you get your
4 funding stream all set up and you think this is what
5 you're going to do, but you can't always do it because
6 of things that happen in the outside world.

7 Funding may be withdrawn or diverted, good
8 example are national disasters, like FEMA. The
9 Northridge earthquake, those kind of things divert funds
10 that you had anticipated, and what the antideficiency
11 act says is that if we don't have the money we simply
12 can't fund it.

13 That doesn't mean we can't implement some
14 of the other elements of our Programmatic Agreement, and
15 we will endeavor to do that as best we can, and when the
16 funding comes back we'll rethink how we're going to get
17 some of these Programmatic Agreement stipulations, but
18 the bottom line is the cumbersome approach, the reason
19 that this stipulation is typically seen in a
20 Programmatic Agreement, is just so that everyone
21 understands, sometimes you just don't -- you can't
22 foresee what's going to happen.

23 And then after we've said all of these
24 things and we've all agreed on these things, then we
0091

1 have the little stipulation that separates into the
2 signature blocks, which is we've all agreed which is
3 what the stipulations are, what our sunset clause is all
4 about, we understand what the anti-deficiency act is all
5 about, and when we sign this, the Ft. Rocky Road, the
6 Army has taken into account.

7 It's Section 106 responsibility, and at
8 the bottom it has the signatories and the signatories

9 are different. It depends on the circumstance. In this
10 particular example I have Ft. Rocky Road and the Army's
11 federal preservation and then historical commission, it
12 could be certified by the government and who, depending
13 on the situation, participates in this particular
14 Programmatic Agreement, and Chad is right, you can have
15 parties and talk, have invited parties and all of that
16 depends on the circumstances also and this could be
17 totally irrelevant. It could be the SHPO, at Ft. Rocky
18 Road and at Ft. Mojave, it could be -- just -- it
19 depends on how you set it up.

20 MR. CHAD SMITH: Did you say that everyone
21 understands the antideficiency acts? I don't think
22 people understand.

23 MS. PEYTON: We kind of have to accept
24 what the antideficiency act says to us.

0092

1 MR. CHAD SMITH: I've worked with a
2 federal agency where they've had an indirect effects
3 program to conduct archeological survey and damage
4 assessments and 300 or so thousand acres, and it didn't
5 work through the deficiency act, and funding was cut,
6 and the program that one of the tribes was administering
7 dwindled down to where it ran on a shoestring.

8 It withered on the vine, is what actually
9 happened, and there was no clause in that Programmatic
10 Agreement for reimplementation, you know, that, "Hey, if
11 the funding dwindles this will have to go into cold
12 storage and when we achieve further funding it kicks
13 back in," you know, and so that's something that --
14 sometimes the lawyers understand these things more, but
15 with -- with at least one, the lawyers go back across --
16 the solicitors for the advisory council go back across
17 to the archeologist, what does this expletive mean?

18 You know, and they get real arcane, and
19 even Machiavellian on some of these documents, it can
20 really bury them, when lawyers don't understand them,
21 you know, it's weird.

22 MS. PEYTON: Well, they are a legal
23 document and, you know, people are signing up to it.

24 MR. CHAD SMITH: It's like a contract.

0093

1 MS. PEYTON: It is like a contract, you
2 know, people are signing up to this, so that's why it's
3 important to be clear about what it is you intend this
4 document to be about.

5 Not being too ambiguous, being very
6 specific, and you make the stipulations fit the
7 particular issue.

8 So in the end why develop PA's? We only
9 have three choices. You've either got to Section 106,
10 which is the cumbersome one, or you go with the PA's or
11 which is -- typically has been going on until the Army
12 established the Army's alternative procedures.

13 It's kind of the only choices that you
14 have to help streamline the process.

15 MR. CHAD SMITH: There's sort of a joke,
16 the guy says "I lost my 'as' at about the third
17 "whereas."

18 (Laughter)

19 MS. PEYTON: And, of course, you know, we
20 already know that it's surfaced, certain kinds of
21 specific actions, and with -- the encouraging
22 partnering, and my last point would be to, because we do
23 have two totally different kinds of agreements, they
24 look very much alike, they have very similar kind of
0094

1 formats, but we're talking about two totally separate
2 clauses and issues here, but you need to make sure that
3 they are complimentary to one another. You don't want
4 to have conflicting documents, so like an unanticipated
5 discovery, you want the language to be similar, to
6 coordinate.

7 MR. CHAD SMITH: On the Comprehensive
8 Agreements for NAGPRA where would the oversight and
9 review at the federal level equivalent to the advisory
10 council be with that, Park Service?

11 And not the NAGPRA committee, because this
12 has come up, the NAGPRA committee is like a concurring
13 party, and it has no authority to Park Service that
14 actually publishes in the federal register, the notices
15 that attempt to repatriate so these CA's when
16 negotiated, they're going to go on to D.C., to Park
17 Service, NAGPRA division to review?

18 MR. BRITT: Okay, and I'm going to tell
19 you I don't know. I can tell you what I think, but I
20 will find out.

21 They go up the chain of command through
22 the Army. I know they go to the Army region and they go
23 to the Army Federal Historic Preservation Officer.

24 Bob, help me out if you know.

0095

1 MR. HORALEK: I'll see if I can find your
2 answer.

3 MR. BRITT: Okay.

4 While he's looking that up I'm going to
5 make a couple of points.

6 What we've tried to present here today are
7 some documents to be used as tools to facilitate
8 information sharing, partnering and stewardship of
9 heritage and cultural assets that we all hold dear.

10 That's the main point I want to make, and
11 by signing these documents is that it is -- it's a
12 contract, it's a binding document.

13 There are provisions that you know what's
14 going to happen, you know what the procedures are, you
15 are able to address these situations that may be very
16 time sensitive or culturally sensitive in a much more
17 expedited manner. It's a win-win situation.

18 A couple of other key points.

19 Comprehensive Agreements we are required to have, the
20 Army is required to have it.

21 Programmatic Agreements, we're not. We
22 either do the 106 process, we do Programmatic
23 Agreements, or we follow the Army alternative
24 procedures.

0096

1 We would like to have a Programmatic
2 Agreement so that we can expedite the process, again for
3 the same reasons; we share information, we can address

4 things much quicker; it saves a lot of people a lot of
5 money as well.

6 Another point I want to bring out is I
7 have sent you, or on behalf of Ft. Irwin, or Ft. Irwin,
8 I'm sorry, has sent out a Comprehensive Agreement, a
9 draft to each of your tribes to comment on.

10 I want to make sure that if you are not
11 aware of it, you are today, it's the same as this
12 document here.

13 In fact, we took "draft," out of it -- No,
14 we added "draft" to it, so we really would like to again
15 move along that path to get this Comprehensive Agreement
16 signed so we can have that in place as a mechanism for
17 dealing with inadvertent discoveries, should they occur.

18 And, Bob, do you have an answer?

19 MR. HORALEK: It looks like it goes to AEC
20 FDA.

21 MR. BRITT: I should have known that, Army
22 Environmental Center.

23 MR. CHAD SMITH: Legally it has to go by
24 Park Service.

0097

1 MR. HORALEK: Actually, they have nothing
2 to do with Park Service.

3 MR. CHAD SMITH: Well, they're the ones
4 that administer NAGPRA.

5 MR. HORALEK: That doesn't matter. They
6 have no control whatsoever over NAGPRA.

7 MR. BRITT: Our chain of command is
8 different than -- the Army's chain of command is
9 different from the National Park Service. It doesn't
10 mean we don't follow the same rules, but the chain of
11 command is different.

12 MR. HORALEK: DOI and DOD both have to
13 follow the same rules. Each has their own system, how
14 we're going to do that.

15 MR. BRITT: They don't fund us to do
16 NAGPRA. The Army is funded, on their appropriation --

17 MR. CHAD SMITH: Well, no, in the event of
18 a dispute it would go before the NAGPRA committee.

19 MR. BRITT: A dispute goes before the
20 NAGPRA committee, correct.

21 MR. CHAD SMITH: But the NAGPRA committee
22 can only recommend and only to Park Service as to
23 what -- what the process is. There's a disconnect here.

24 MR. BRITT: There is a disconnect, and I
0098

1 will do my best to get an answer for you, but I've done
2 the best I can today.

3 MR. BARI: I hope we never have to go
4 there.

5 (Laughter)

6 MR. BRITT: I think we all -- and again,
7 that's why these Comprehensive Agreements are an
8 essential tool to stave off incidents like that. It
9 really is.

10 I want to thank you, Paige, I appreciate
11 it.

12 MS. PEYTON: Sure, I had one last thing.

13 MR. BRITT: I'm sorry.

14 MS. PEYTON: That's okay.

15 Actually, all it is, if you really are
16 excited about Programmatic Agreements and want to learn
17 a lot more, there are some websites that you can go to.

18 MR. CHAD SMITH: And National Preservation
19 Institute --

20 MS. PEYTON: Sure.

21 MR. CHAD SMITH: -- is hosting a two-day
22 workshop at Phoenix, it might be three days, October
23 21st, 22nd and 23rd, and Matthew Billsbarrel of Arizona
24 SHPO is coordinating registration for that class, but
0099

1 it's \$525 per participant.

2 Perhaps to go and attend, and come out of
3 it more confused about Programmatic Agreements than when
4 you went in. I've been -- I was there for about the
5 third Programmatic Agreement that it was ever negotiated
6 on Arizona SHPO and the Hopi tribe decided to not enter
7 into that Programmatic Agreement with that federal
8 agency, and Advisory Council and Historic Preservation
9 did, and it really superseded the Arizona State Historic
10 Preservation Office.

11 But yet it's on federal land, it's not
12 state land, and the only reason the state historic
13 preservation offices have any participation in any of
14 this process is that it's by delegation of authority
15 from the Secretary of Interior to that State Historic
16 Preservation Office to be like the stand-in for the
17 federal level.

18 And as time went by more of these state
19 historic preservation offices began to get the word
20 "States rights," in some of what they were doing and
21 saying with tribes, and I had to tell them that if
22 dealings with Indian tribes over the centuries of this
23 country were up to state governments, there would not be
24 any Indian tribes. The example is Texas.

0100

1 And it's only through the federal
2 government -- actually actively intervening at times
3 with tribes that the tribes still exist.

4 There was a situation with this tribe in
5 the 1800's when a federal employee at the Indian
6 service, the Indian agent down the river at Parker
7 ordered these Mojaves to be force-marched, like the
8 Trail of Tears of the Navajo and the long walk of the
9 Cherokees, and of the Yavapai people to San Carlos to
10 Camp Verde that moved those Indians out, other people
11 wanted that land, and the commanding officer at Ft.
12 Mojave, right across the river over here, interceded and
13 told that guy where to put his orders, that he was
14 giving to a United States military personnel, and he
15 facilitated for this tribe to stay where this tribe has
16 always been, in its homeland.

17 And so, you know, I'm not a Mojave, but I
18 know from what I've been told by Mojave elders, that
19 there's a great feeling of respect and a great deal to
20 the United States Army that over a hundred years ago, a
21 man in uniform did the right thing for these people I
22 work for now.

23 MR. BRITT: That's good to hear.

24 MR. CHAD SMITH: And it's greatly
0101
1 appreciated. It really is.
2 MR. BRITT: It's great to hear. They're
3 still telling those stories.
4 What I'd like to do now is we've got what
5 we call a listening session, if anybody wants to talk
6 about or discuss anything we said today, or wants to
7 bring up a new topic, we'd like to keep it general in
8 nature.
9 I would like not to talk about specific
10 projects other than in a general way, so that we don't
11 get bogged down.
12 But the floor is open, I'll be happy to
13 revisit some of your questions earlier, Lee, if you
14 would like to.
15 We've got a lot of people here, a lot of
16 knowledgeable people here.
17 The more some of us talk, I think the
18 better we'll all be.
19 MR. BARI: I want to, I think, pay more
20 attention and I would ask you all to maybe pitch in to
21 this one, the one that the agreements that we have put
22 forward to be signed, maybe give your comments on from
23 your nation's side, how you feel about this document.
24 This was sent to all of the nations,
0102
1 right?
2 MR. BRITT: Do you know when that was
3 sent? It's been about a month ago.
4 MR. BARI: We would like to have your
5 comments and also your feelings on becoming a signatory
6 on this one, and if we can get the comments maybe in the
7 near future within a couple of months, and we can set a
8 date for signatory ceremony for this one.
9 I'll open the floor and let's discuss it,
10 if we have some feelings.
11 MR. BRITT: We need some feedback, that's
12 what we need, particularly those items -- the list of
13 items that I had mentioned earlier.
14 We can send that back out as a letter
15 asking for you to consider these items in any more areas
16 of consideration.
17 Just as a reminder, I'll be happy to send
18 that out next week, and we'll ask if you could indicate
19 when a date would be good to have a signing ceremony so
20 we can sign that.
21 And obviously we don't have to do it all
22 at the same time; so each tribe, it's a
23 nation-to-nation.
24 MR. CHAD SMITH: It's a lot smaller print
0103
1 than the copies that were sent to us.
2 MR. BRITT: Okay. That was intentional,
3 Chad.
4 (Laughter)
5 MR. BRITT: But that is -- Muhammad's got
6 a good point.
7 The national training center really does
8 want to get that document signed. They're expanding,

9 they want to be prepared to know what to do, should an
10 inadvertent discovery occur so that they can address it
11 properly and respectfully and give it the proper
12 treatment.
13 So it would be to everybody's advantage
14 that we could get your input. And again, I'll send out
15 a letter -- I'll prepare a letter and send it out on
16 behalf of Ft. Irwin or through Ft. Irwin on specific
17 items that we would like you to contribute.
18 What I'd like to do now before we turn it
19 up for open discussion is in case you may be asking
20 about what are we going to be talking about tomorrow, we
21 will talk about an update on the land expansion. 24,000
22 acres were inventoried and evaluated last year. I gave
23 you -- in September I gave you some early data on that,
24 how many sites were found. I'd like to give you an
0104
1 update on that.
2 I would also like to give you an overview
3 of the cultural affiliation study that was conducted by
4 David Earle last year. We've got that study in, that's
5 more of an internal document to help Ft. Irwin -- it's
6 not a 106 document, is what I'm trying to say, it's not
7 a required document.
8 I will be handing out copies. We
9 certainly encourage you to comment on them. There's
10 no -- there's no requirement to comment on it, but I
11 feel like it's a very good document that provides a lot
12 of useful information not only for Ft. Irwin but for all
13 of the tribes that were researched in there.
14 Then later in the morning Mickey and I
15 will be talking about some work that has been -- that is
16 proposed to take place this year if funding comes
17 through.
18 So we'll be talking about the fiberoptic
19 network and the proposed rail spur from Yermo to Ft.
20 Irwin, give you updates on those.
21 And basically we have all afternoon
22 tomorrow for a listening session.
23 I know that some people will not be able
24 to stay here Saturday, and I just want to propose this
0105
1 idea.
2 If we get finished early, Chad, could we
3 visit a couple of cultural sites in case some people
4 aren't going to be able to be here Saturday?
5 Mr. CHAD SMITH: Yes.
6 MR. BRITT: We don't want to impose. I
7 know that there are some really neat intaglios around
8 here, I'm anxious to see them.
9 MR. CHAD SMITH: Right across the river a
10 place called The Twins that's protectedly fenced, and
11 it's anthropomorphic figures of rocks laid in place of
12 the ancient Mojave, and it's known of and within a
13 built-up area.
14 And then the other location is up at the
15 Inscription Rock at Davis Camp where tomorrow at noon I
16 have a meeting during the lunch.
17 MR. BRITT: Okay.
18 MR. CHAD SMITH: With Bureau of

19 Reclamation and some of their proposed interpretive
20 trail and fencing and the rest of that, and it's what's
21 called Davis Camp, right the other side of the bridge
22 that goes across from Laughlin, the next bridge up from
23 this one.

24 But our policy in general is to not have
0106

1 visitation at these important cultural locations, but
2 these are -- as I say, within a development area and
3 population centers, and on numerous maps and active
4 management by these federal agencies, this one across
5 the river not so much as the one up at Davis Camp, so
6 it's -- it's a touchy subject.

7 MR. BRITT: Sure. We want to be
8 respectful.

9 MR. CHAD SMITH: But given the nature of
10 this meeting, that it is appropriate.

11 And also, you may notice, and Darrell may
12 notice some similarities in some of the glyphs at Davis
13 Camp with glyphs at Ft. Irwin and other places out
14 there.

15 You may not notice some similarities with
16 this type of intaglio with The Twins as compared with
17 the long, linear rock alignments and that, cleared
18 earth, but yet there may be some that are even smaller
19 of the quartzite cobbles that are laid in place that are
20 an anomaly, unexplained on the post itself too.

21 MR. BRITT: Thank you, we appreciate your
22 being flexible. If we get finished, we certainly don't
23 want to cut into our time for some good consulting going
24 on, we certainly want to keep that up.

0107

1 And at this time I want to open up the
2 floor to any kind of discussion, any topics, any
3 questions or concerns.

4 MR. CHAD SMITH: Well, many of us on the
5 tribal side here have, even today, mentioned the
6 difference between installations, in particular China
7 Lake, perhaps at an all-time low of interaction with
8 native peoples, and active involvement of tribes in
9 cultural resource management, and the Nellis
10 installation at an all-time high of the Native American
11 program that it has there.

12 And Nellis, for various reasons on the
13 range itself, has some exclusions from National Historic
14 Preservation Act, some of which are even secret and only
15 come into play when lawyers try to file lawsuits for
16 people getting toxic contamination for some of what goes
17 on at an airfield that the Air Force had to deny for
18 national security reasons even existed; an airfield that
19 does conduct operations at Leach Lake on Ft. Irwin.

20 And for years Nellis has had the Native
21 American Program that kind of goes Section 106
22 consultation and participation by tribes one better.
23 And what many of us think should be considered by Army
24 is emulating the programs that Air Force has at Nellis
0108

1 where you have a consolidated group of tribal
2 organizations and their representatives, that even take
3 on some projects related to the ethnographic studies and

4 field visits of important cultural sites, and one way or
5 the other I'd like most of the people here to be able at
6 some time to go to the large site, what's called the
7 Whale on Ft. Irwin, it's immediately adjacent to the
8 proposed powerline expansion area, and especially the
9 Mojave people, knowing that there's the important
10 cremation grounds and other Mojave sites right to the
11 south there at the Mojave River itself, right there,
12 that even a thousand years ago had water running in it,
13 and at the time of the ancient lake, some of these
14 Mojave elders that have recently gone to the other side
15 of existence told me that their people would go there,
16 and they could scoop up water and drink it from these
17 vast lakes that were up there that had fish in them, and
18 they could go in canoe from one to the other where the
19 Mojave River looped out through Silver Lake, and on to
20 Ft. Irwin itself too, and it is -- to me it's
21 ethnography and cultural resource management real time
22 by the native peoples whose ancestors lived in these
23 places.

24 And it's really do-able and it's not
0109

1 burdensome money-wise, and it's not a security risk at
2 all because any installation that has private sector
3 archaeologists working on it can have tribe sector
4 Native Americans working on it, and not just as crew
5 members on surveys, but running a program, and that's at
6 the direction it's gone on at Nellis with Mr. Bricker
7 and Mr. Tarot's participation, and Lee, Darrell, many of
8 the others who have participated, and it makes everyone
9 look good, and it's a lot of work, you know, too, but
10 it's work that these Indian people take on voluntarily.

11 And so we can gather up information about
12 how it's done by Air Force, and surely Army can't let
13 Air Force get a one-up on it.

14 (Laughter)

15 MR. BRITT: They do have a very good
16 program. I'm familiar with Keith and his program there,
17 they've got -- of course, they have a unique, quite a
18 different situation there. It's the nature of their
19 activities.

20 MR. CHAD SMITH: Yes.

21 MR. BRITT: But on behalf of Ft. Irwin,
22 I'm sure you all would be honored to have people come
23 out and visit.

24 MR. QUILLMAN: Absolutely.

0110

1 MR. CHAD SMITH: Because it is a sacred
2 site.

3 MR. BRITT: I don't think that's disputed.

4 We'll talk about a lot of those things tomorrow.

5 MR. BARI: We would -- I think -- be glad
6 to have -- if we have consolidated groups, like certain
7 nations has a participation, and they all come together,
8 yes, who want to visit we've got no problem with that.

9 MR. BRITT: It's just a matter of
10 coordinating with the training schedule. I'm sure they
11 all would be honored to have them.

12 MR. BARI: I would like to have a team
13 approach even signing this comprehensive document after,

14 where different nations and the Army can all come
 15 together "Yes, we want to do this and we will do this."
 16 MR. QUILLMAN: The weather is cooling off,
 17 maybe we could have the signing ceremony in about 90
 18 days, I think that would be appropriate.
 19 MR. BRITT: That's a good idea.
 20 MR. CHAD SMITH: Many of us in the tribal
 21 side of things, we have to communicate this information
 22 from these meetings to the elders, and also to the
 23 tribal chair, if upon reviewing and all of this
 24 information, if we feel -- or the tribe should enter
 0111
 1 into a Programmatic Agreement or comprehensive
 2 agreement, or there's a venue in there in the alternate
 3 procedures for tribal signature as well.
 4 And then, of course, the chair, when they
 5 sign on behalf of the tribe that's after they get the
 6 advice and consent of the tribal council itself, so
 7 we've got our level of command.
 8 MR. BRITT: If you could collaborate.
 9 MR. CHAD SMITH: Chain of command.
 10 MR. BRITT: Each has its own set of
 11 procedures and protocols.
 12 For your tribe could you tell me or
 13 explain to all of us, give us some idea of what the
 14 procedures are and the timeline.
 15 MR. CHAD SMITH: well, for my tribe, which
 16 is the Apache tribe, they get together in the council
 17 chamber and yell around a lot, the Apache way.
 18 But for the people for whom I work, for
 19 the Mojave people, it is as I described it.
 20 We're just the facilitators in the
 21 cultural office.
 22 MR. BRITT: Sure.
 23 MR. CHAD SMITH: And we work with
 24 Mrs. Butler and Mr. Bricker and many of the other
 0112
 1 knowledgeable tribe members, respected members of the
 2 community, and if we're ever contrary to what they think
 3 is good, then we're going the wrong way.
 4 MR. BRITT: Sure.
 5 MR. CHAD SMITH: And its only after that
 6 that we would recommend to the chairperson based on
 7 their go-ahead on something like this, and the difficult
 8 part with any cultural resource manager is to explain to
 9 people that aren't archaeologists or -- I hate to say --
 10 bureaucrats, you know.
 11 The intricacies of some of what is being
 12 talked about and that, you know, we're still wondering
 13 who these battalions are that are referred to in the
 14 reports, where they talk about the ancient people, when
 15 we know it's the Mojave ancestors mostly that are
 16 referred to out in the Ft. Irwin area.
 17 And, of course, the last thing I want to
 18 say, because I'm just dragging on, and you guys are
 19 going to have to speed me up on some of this or we won't
 20 make that early time tomorrow, I'll still be sitting
 21 here talking, that none of the policies that we express
 22 from our office exclude any other tribe's presence at
 23 any time in the past, or the validity of any other

24 claims, and I've seen it personally with other tribes
 0113
 1 that where there can be disagreements that can affect
 2 NAGPRA to where some -- even human remains are still in
 3 the museums that could have been put back in the ground
 4 because there was between Hopi and the four southern
 5 tribes a dispute in the past, you know.
 6 And the nature of this big desert out
 7 there is that the culture areas weren't straight lines
 8 on the maps like in the archeological reports.
 9 There was overlap, both simultaneously
 10 where different peoples could be in the area at peace,
 11 gathering pinions, fishing or whatever, and sequentially
 12 in time as well, and it changed back and forth over
 13 time.
 14 So it's really complicated, and we will
 15 work constructively and cooperatively with all parties
 16 MR. BRITT: That's a major point that's
 17 brought out in these cultural affiliation studies. What
 18 the tribes were called 50 or 150 years ago, the social,
 19 political structure is totally different today. That's
 20 something that we have to understand the social and
 21 political dynamics and take all of that into account
 22 when we try to work with you to determine cultural
 23 affiliation.
 24 MR. CHAD SMITH: In NAGPRA, the oral
 0114
 1 tradition of the tribe carries equal weight and, of
 2 course, to me and others much more weight than
 3 determinations by archaeologists of what ancient pottery
 4 or arrowheads go to, or are ancestor to what the present
 5 day group is and that goes right down to -- even to the
 6 human genome project, and DNA testing, whenever it has
 7 been done, and sometimes not even with the knowledge of
 8 tribes or even over the objection of tribes, and it's
 9 like with the traditional cultural properties trying to
 10 apply the eligibility of criteria, the criteria of
 11 eligibility for the national register who has developed
 12 for archeological sites sacred springs, plant gathering
 13 in areas and other places important to the Indians, the
 14 way I explained it long ago at a meeting was that if an
 15 Indian Tribe, a knowledgeable elder says it's important
 16 in the culture, then it's eligible, and we don't see
 17 that much superseding of the other lines of evidence in
 18 the National Historic Preservation Act.
 19 But NAGPRA goes with preponderance of
 20 evidence, and the evidence can be one line of evidence,
 21 the oral tradition that the history that the people
 22 carry with them themselves in their culture, and that
 23 one line alone can be the preponderance of evidence.
 24 It doesn't have to be like in a criminal
 0115
 1 case, beyond a shadow of a doubt.
 2 And then lastly, in issues where Indian
 3 tribes have gone to court, often there is the doctrine
 4 of sympathetic interpretation, sympathetic
 5 consideration, that when it's 50-50 over whether a tribe
 6 should get the land that it claims under the land
 7 commission, the Land Claims Act, and it didn't work out
 8 this way in reality, it should have, that it goes to the

9 Indian tribes, sympathetic interpretation, and that goes
 10 back to the constitution itself.
 11 And, of course, the first law passed by
 12 the US, the northwest ordinance that when an
 13 installation of the military is no longer being used and
 14 is being BRAC'd as you would say nowadays, Based on
 15 Reauthorization Of Closer, that it reverts to the Indian
 16 tribe upon whose lands it was at the time that it was
 17 taken from the Indian people.
 18 And people that worked, negotiate with
 19 Indian tribes, can keep that in mind.
 20 Again, I fall back on the jargon the tie
 21 goes to the runner, and these Mojaves are great runners
 22 and still are, so the benefit of the doubt, but there
 23 shouldn't be that because when they say it's important,
 24 their stories about the past, which really is a recorded
 0116
 1 history handed down through generations, and even in
 2 places written on these rocks and on the sticks that
 3 keep the time and all of that, it's real, it's history,
 4 and the absence of evidence of presence of people living
 5 in sites on Ft. Irwin and burying those who passed
 6 there, cremating those who passed there, is not evidence
 7 of absence. They just haven't been found yet. It's
 8 there, believe me.
 9 MR. BRITT: I believe that's the tactic
 10 Ft. Irwin is taking. That's why we want to get this
 11 done so we can treat them properly.
 12 MR. KANE: Chad, on our reservation up
 13 there in Bishop, there must be some Apaches because
 14 that's what we do when we get together, we tell a lot.
 15 We had a lot of these.
 16 MR. CHAD SMITH: Then go have a barbecue.
 17 (Laughter.)
 18 MR. RAY: How many Indian tribes have been
 19 notified of this?
 20 MR. BRITT: 14.
 21 MR. RAY: 14?
 22 MR. BRITT: Yes.
 23 MR. RAY: Do you have a list of that
 24 MR. BRITT: Yes. I can -- I'll give you a
 0117
 1 personal copy. Yes, it's on the slide.
 2 MR. CHAD SMITH: I reviewed the draft
 3 comprehensive agreements and have comments that I will
 4 provide. I don't have them right here with me.
 5 And I am interested in where DOD
 6 articulates with Interior and Park Service on the top
 7 phase through the act itself because it specifically
 8 refers into the act that it's administered by Park
 9 Service.
 10 And the advisory role of the NAGPRA
 11 committee is something that really rubs a lot of tribes
 12 the wrong way because they have made cold, hard
 13 recommendations that responsibilities and authority for
 14 NAGPRA that lies ultimately with National Park Service
 15 right now be removed from Interior and from National
 16 Park Service and placed in a special commission like the
 17 Federal Communications Commission or something else
 18 because there's a conflict of interest where Park

19 Service has museums with NAGPRA items in it, and you
 20 even have Park Service archaeologists going contrary to
 21 Native American interests as expressed by a majority of
 22 the tribe over the Kennewick situation and some of their
 23 more esoteric theories about the greatness that's
 24 evident in the early flake stone technology came from
 0118
 1 European in boats, and in the back of their minds is
 2 something like "Well, an Indian couldn't have done
 3 this."
 4 Well, the Indian invented the jack knife,
 5 the pocket knife and potato chips, all kinds of other
 6 things, the Mayas had the zero, and even in some of the
 7 words used by archaeologists like "The New World," for
 8 the western hemisphere automatically implies it's not as
 9 good as the old world, it was all developed in that
 10 civilization, and then the word prehistoric, which
 11 refers to Indians maybe not having history, well, that's
 12 qualified, you say "prehistoric" means before written
 13 history, yet the Maya had written history at a thousand
 14 B C, and before them God himself only knows what time
 15 the Olmecs developed writing and they invented the zero.
 16 So it's kind of backwards or looking at
 17 things through a dirty windowpane or something of what
 18 really took place in the past, and the only ultimate
 19 proof for archaeologists would be to have a time machine
 20 and tape recorder and a camcorder, and to me the
 21 ultimate proof is what the Indian people say in their
 22 cultural because they're the ones who were living here
 23 when it happened.
 24 And the unidentifiable, indeterminant
 0119
 1 cultural affiliation of human remains, they absolutely
 2 have to be ancestral to many of the Indians living
 3 today.
 4 I mean if you think about it, how could
 5 one group of people have lived in a vacuum with, no
 6 intermarriage and somebody leaving that group to go
 7 marry over here and they go with that other tribe, and
 8 even if very minutely they are related to the present
 9 day living people, this tribe when they started out over
 10 in this tribe and intermarried like that over the years,
 11 it -- it's a real issue.
 12 And in the long run if it goes the way
 13 that Park Service has been going on these
 14 unidentifiable, unaffiliated human remains, the museums
 15 get to keep them as objects of scientific curiosity and
 16 for further study in the future and even include
 17 destructive analysis and other such things.
 18 And there might be several opportunities
 19 in working with DOD on things like this comprehensive
 20 agreement where that land managing agency could say "No,
 21 by gosh, any human remains that are non-European that
 22 are considered to be Native Americans that ever are
 23 found on Ft. Irwin will be" -- and I hate the word
 24 "Disposition,"
 0120
 1 MR. BRITT: I don't like that word either.
 2 MR. CHAD SMITH: Meaning "disposed of."
 3 MR. BRITT: Right.

4 MR. CHAD SMITH: But what will be done
5 with those human remains will be contingent to tribal
6 approval and recommendation, and, of course, the tribe
7 is going to recommend put those bones or those ashes,
8 burnt bones back into the ground as close as possible as
9 where they were found, yet out of harm's way.

10 Again, on Nellis there have been numerous
11 reburials of remains that were found on that facility
12 with tribal participation and ceremonial blessing, and
13 it's easy, you go by what would the deceased want, what
14 would that person want? And it works.

15 MR. BRITT: I think that's Ft. Irwin's
16 intent, to be respectful and afford proper treatment.

17 We're lucky we don't have a lot of those
18 situations that we have to deal with, but we want to be
19 prepared, should they occur.

20 MR. HORALEK: Can I ask a question on
21 that? I like what you're thinking, and I don't think
22 we're stuck with any given formula with how we do this.

23 My question would be, would the 14 tribes
24 who were identified and obviously from the conversations
0121

1 I've heard, we aren't even certain that's all of the
2 right tribes, is there some way that if we had an
3 agreement that were remains found we could go to a group
4 of those tribes, tribe members that they have put
5 together where they make that determination, but how do
6 we -- how do we find that group?

7 MR. CHAD SMITH: Well, you request each
8 tribe to appoint a representative to a Native American
9 programs group of Ft. Irwin itself.

10 MR. HORALEK: Okay.

11 MR. CHAD SMITH: And you use the model at
12 Nellis Air Force Base, right off the shelf, it works
13 perfectly, maybe -- nothing is perfect, you know, but
14 I'll qualify that, but it works, and like I say, it's
15 going above and beyond Section 106, they have to.

16 And I think it's a good way to go, I
17 really do. And some of the same individuals or perhaps
18 all the same individuals that would work with the tribes
19 working at Nellis, it's an extra -- than extra little
20 load to carry with another installation too, but I look
21 for an opportunity, on the part of the tribes
22 themselves, and the individuals too, they -- it never
23 reaches the stage of archaeology budget, and as I tell
24 developers on projects all over the west "Look, to do
0122

1 right by the Indians," and if it means putting in a few
2 extra culverts in a road you're building or something
3 like that, it costs -- Well, the PR aspects shouldn't
4 really be a consideration, you know, but it is.

5 It's good interethnic relations, I'll put
6 it that way.

7 MR. GUNDRUM: I might say it is in our ICBM
8 it is in one of our recommendations to go along
9 those lines and I guess what we need to put into play is
10 specific procedures how we would follow that and here
11 again, you know, it's bringing up Nellis, I don't know
12 if you can provide us with the details of how they do
13 that, we can track that down.

14 MR. QUILLMAN: We can make that effort to
15 have that in our system.

16 MR. CHAD SMITH: This gentleman sitting
17 right here.

18 MR. BINTER: I would tell you as a Mojave,
19 full blooded Mojaves say, "Hey, they were good to me,
20 they treated me like I was a person.

21 My biggest beef with military all over the
22 world, no matter where you're at, Native Americans,
23 until 1924 we were not considered human beings, by an
24 Act of Congress we were declared.

0123

1 I was seven years old at the time, put it
2 in there, I learned to respect you people, and, you
3 know, this man did what any Indian would do. He turned
4 and looked at you to talk to you because that's -- they
5 told him to look. No, you said let this man continue,
6 talk to him, and he was talking to him. That was
7 respect.

8 MR. BRITT: I didn't mean to disrespect
9 him.

10 MR. BINTER: But we have people also, you
11 know, and things you want to go ahead and sign something
12 you remember we got to go home and talk about it too, we
13 have to discuss it amongst us, we have different tribes
14 here.

15 It's sort of like a pushing match and, you
16 know, Mr. Chad Smith told his story about how the Army
17 saved the Mojaves, but, you know, that same Army person
18 gave a gun to another good Indian people, saying get
19 these Indians out of here.

20 We're still here. We're going to be here,
21 I like the story, I agree with it because that's partly
22 right, and as they often said, that's how you Army --
23 the person, he got a gun and gave it to the other tribe
24 so they could get rid of us.

0124

1 But we are still here, we'll remain here
2 and everything you see about us now, we all know this
3 story; we've always known this, but, you know, to try to
4 push it into doing something we have to discuss it
5 amongst ourselves. This is not just one tribe; there's
6 a number of other tribes, so give us that opportunity to
7 let us think this through, you know.

8 MR. QUILLMAN: Our intent this week, sir,
9 is only to open the lines of communication.

10 MR. BINTER: We're well aware of that, I
11 understood what you said, and I understand it well.
12 You've got to realize, you know, I joined the military,
13 I became a white head, Caucasian, and I got out so
14 there's a lot of hurt here for me certainly because the
15 same wars that you guys fought, I have relatives in the
16 South Pacific, I have them in Germany, Vietnam, why
17 can't we be equal like you said? We're not, we seem
18 like we have to prove something. We don't have to.
19 That's the biggest issue that I have about this type of
20 thing. You see it, you knew it, not you, but your
21 family here, you know, but we certainly have respect for
22 religion, you know.

23 If you find bones of a person. You look

24 at the land as Native American it's something sacred to
0125
1 us, the wind blows, the mountains look good.
2 I mean to have archaeologists that I know
3 and speak of this. You know you'll never get away with
4 it.
5 I can get away with it because some think
6 I'm stupid, I'm not, you know, that's my belief, I
7 really enjoy it.
8 I don't mean to be down, just things being
9 said, you know, but you've got to understand, you know.
10 MR. BRITT: That's why we're here.
11 MR. RAY: He talks about the rocks or
12 something like that, we worship the rocks, you know, you
13 talk about areas where there is writing, things like
14 that we worship that, that's our church.
15 MR. QUILLMAN: Yes.
16 MR. RAY: Like your Bible says, Jesus
17 building a church on the rocks, that's why we go to the
18 rocks, way before the Bible came out, we had our belief
19 in our collections, but these are things that you don't
20 understand.
21 MR. QUILLMAN: I understand that.
22 MR. RAY: And the only respect I can think
23 of is Jim Thorpe, because he won the gold medal, but he
24 was not a citizen of the United States.
0126
1 MR. CHAD SMITH: So many Native Americans
2 are patriotic and go into the service, and one old man
3 says "White guy says why do the Indians go and fight?
4 Because look what they did to them," and my grandpa told
5 him, he said, "Well, the Indian knows if the US goes
6 down to these Japanese, all of the Indians are going to
7 have another guy come in and take more land away and
8 treat them worse."
9 So, you know, we're citizens of the tribe
10 and the culture and citizens of the US and very
11 patriotic as well.
12 MR. BINTER: You give some of the land
13 back to Japan, some of the islands back to them, when
14 are you going to give a little piece of ours back? I'm
15 sorry, I'm just --
16 MR. QUILLMAN: I understand your
17 frustration.
18 MR. BINTER: That's the way it is, though.
19 MR. RAY: There is frustration because we
20 don't go out in the area of Ft. Irwin.
21 I remember the area. I went, when I got
22 older and grew up and heard about it, I went out there,
23 set out like he does, he sits out there, and sitting out
24 there, you know, like the Mojave National Park reserve
0127
1 came out at that time, he was out there he didn't know
2 the history.
3 I was telling him. He didn't know nothing
4 about it, my way of thinking, our way of thinking, they
5 do have record, but that wasn't the way I knew it.
6 MR. BINTER: Some of the old people tell
7 you to go down to Death Valley, you know, they was
8 telling me there's a group of white guys and they all

9 speak Mojave and I said, "Oh, really."
10 I don't know if it's true or not, but then
11 these are people that have been there and seen it, who
12 knows? You know.
13 When you look at some of the oriental
14 people, you know, being blue-eyed, it makes you wonder,
15 could it be, did it happen here also?
16 Today you have blonde haired Indians
17 walking around, you know, that's kind of --
18 MR. RAY: Our kids are -- dark, my
19 daughter was like that, part Navajo, she had reddish
20 hair until she grew older.
21 MR. BINTER: I didn't mean to take you
22 guys off the subject.
23 MR. QUILLMAN: That's fine.
24 MR. BINTER: I need to say it.
0128
1 MR. QUILLMAN: We appreciate that.
2 MR. BARI: What was said to Lee, what was
3 happening, we have a stenographer sitting over there who
4 is recording all of the conversation, so the only thing
5 he asked was please, if he can talk seeing him.
6 MR. BINTER: I understood that, but the
7 whole thing, the whole thing is he could have said
8 "Excuse me, sir, we have stenographer there," he didn't
9 say that, you know, that's what we were taught in
10 boarding school, to be more pleasant, and me, you
11 were whipped if you didn't act accordingly, so I felt
12 offended because this is Indian, you've got to remember
13 that, this is Indian, respect us, you came here to talk
14 to us about something, we're listening to you. We will
15 agree with you, but I say, give us time to think this
16 through, give us time to talk amongst ourselves, you
17 know, because this is not just one tribe.
18 That's like if you go to -- Okay, let me
19 tell you straight up. Iran, Iraq go to their places and
20 see how they treat each other, you know.
21 You know, I make light of this, you know,
22 when they say go ahead and bomb this place over here and
23 when you die and go to heaven you're going to get seven
24 virgins. I don't want a virgin, I want somebody that
0129
1 has experience. You know?
2 Thank you. I have a conviction about it.
3 COL. FLINN: We're looking for people who
4 can help us through this process. Looks like we found
5 the right person.
6 MR. BARI: This is the most thing we're
7 getting out of this, this is the openness that's what we
8 want, to have it, so say what you feel and we say what
9 we feel.
10 MR. CHAVEZ: I have one question on that.
11 Why is it that you can see this on any
12 documentary, documented movie or educational movie on TV
13 or whatever about all of these other people that commit
14 genocide on their people, and we're the big saviors that
15 go protect them, and that's the reason we go to war, but
16 the United States itself will never admit to the
17 holocaust that they committed on our people here. Why
18 is that?

19 MR. HORALEK: The winner always writes the
20 history.

21 MR. CHAVEZ: The winner?

22 MR. HORALEK: The winner.

23 MR. CHAVEZ: I don't perceive it as being
24 a won battle.

0130

1 MR. HORALEK: I don't disagree with you.
2 What I'm trying to say is unfortunately history as I
3 know it from every culture, has basically been written
4 by the one side, and it's always going to reflect good
5 on the person writing it. It's not true history, in
6 other words.

7 MR. CHAVEZ: The United States wants to
8 appreciate, should they tell the truth?

9 MR. HORALEK: Like President Clinton?

10 MR. RAY: Cortez, he won the big battle
11 but there's not a statue down there in Mexico. He wrote
12 the history, I guess, but not the final.

13 MR. BARI: I think we had planes on the
14 other side -- we have -- the boss is here.

15 MR. CHAVEZ: Correct. He said go ahead
16 and vent it. I do feel better, having said that,
17 because it's never said.

18 I never learned that in my history going
19 through school.

20 MR. CHAD SMITH: There has been the
21 national apology for slavery to the African-American,
22 the apology for internment to the Japanese people.

23 MR. CHAVEZ: We paid them a great deal of
24 money.

0131

1 MR. CHAD SMITH: But you haven't seen a US
2 president, based on the advice of consent of the
3 Congress get up there and say "I apologize to the
4 American Indian from what was done."

5 MR. CHAVEZ: But we'll still use them.

6 MR. CHAD SMITH: About ten years ago at
7 Ft. Huachuca we had a meeting like a celebration there,
8 the Apache people, for the unveiling of the statue to
9 commemorate the Apache scouts, and it has the lieutenant
10 up on horseback and Victor modeled for the Apache scout,
11 and he's standing next to him holding onto the stirrup,
12 you know, and we often were on foot in that capacity,
13 often on horseback, but the installation commander got
14 kind of choked up in the speech he gave and he said,
15 "You know, this is now, that was then, I guarantee you
16 Apaches that if then was now it wouldn't turn out like
17 it did then," that in many ways where we are sitting had
18 a -- right here is on the map within the State of
19 Nevada, but I have to tell the state historic
20 preservation officers when they go and trying to boss
21 tribes around, that it's only an accident of politics,
22 geography and attempted genocide that the state has its
23 boundaries around where the tribe lands are that are but
24 a remnant of the original lands, and how could it be
0132

1 other than that truth, because who was here first? The
2 tribes, of course.

3 I think the US has come a long ways

4 towards what we call a multiethnic society, but so much
5 of these non-Indian Americans is really Indian, in their
6 architecture, their language, and maybe some of the
7 spirit, the soul of this country rubs off on them in
8 their culture and as individuals too, because they can't
9 go back to Europe, they're Americans.

10 MR. CHAVEZ: Hell, we got baseball teams
11 named after us. What more could we want?

12 (Laughter)

13 MR. CHAD SMITH: And as guests and fellow
14 Americans in the Indian land which will always be
15 spiritually in so many ways Native American regardless
16 of the fact that it's off reservation.

17 Like I keep coming back to that place, I
18 would look at form Kern River pipeline between Baker and
19 Barstow, right across the fence, I'll talk a little more
20 about excursions from the post into important Mojave
21 cultural areas, inadvertent units straying outside the
22 boundaries, on a project that we did with Darrell and
23 BLM out there with them several years back.

24 And you think about had it turned out

0133

1 different would there have been, as in China, a
2 civilization, continent wide, or area wide of those
3 native peoples who have taken on so many of the European
4 ways that they have the weapons of mass destruction, the
5 military, the technologies, most of our TV's are made
6 over there too.

7 And it's a problem, but the multiethnic
8 society in which we live is more and more becoming real
9 instead of just one, and this man's Army that is all of
10 our Army, it's got people of all background, and Indians
11 too.

12 MR. CHAVEZ: The United States Army has
13 people of the world within their forces.

14 MR. CHAD SMITH: Yes.

15 And the Mojaves, I guess, used to know in
16 ancient times various roots of other people, perhaps
17 even the scouts or Irish gangs who had came long before
18 Columbus, and they would get out in the middle of this
19 desert and be barely making it, and they would render
20 humanitarian assistance to these people, and later in
21 time even to other tribes, fellow tribes, and people
22 would rest up and stay and replenish their dehydrated
23 bodies and eat food, and almost always, then, they would
24 move on and if they didn't, I'm told they would be told

0134

1 "You know you have been here a couple of months now,
2 what are you going to do?" You know, it's about time to
3 move on.

4 Well, then here came the Euro Americans,
5 after the Spaniards, the Americans, and they didn't keep
6 going. They stayed.

7 Then they brought the railroad. And then
8 I 40, you know. And -- but --

9 MR. CHAVEZ: I heard that that's why there
10 wasn't such a great resistance as it was, they said
11 "Don't worry about it, they'll move on."

12 MR. BINTER: Mojave thought that. They
13 fed them, they let them stay, rest and that, "There's

14 another waterhole down the road, do you want to see it?"
15 they would take them and leave them there.

16 MR. CHAD SMITH: Where did our scouts go?
17 Oops.

18 MR. BARI: This is a great land that
19 involves everybody. I came from seven seas, across from
20 India and this is a great country who have everybody
21 here, and this is a United Nations in itself. That's
22 the way I understand, and I come to this country, and I
23 think this is a great country, and it is to the land
24 itself.

0135
1 MR. CHAVEZ: Let's keep it that way and
2 get Arnold off the bandwagon. He's going to take
3 everything we have away from us.

4 MR. CHAD SMITH: They liked the Indian --
5 the Iroquois form of government so much they made a
6 large part of the US Constitution based on the Iroquois
7 confederacy and I think that whatever God you speak of,
8 or define power, watches over the USA, or the USA
9 wouldn't still be.

10 MR. CHAVEZ: Okay, Chad, time's up.

11 MR. RAY: One more question. This list
12 here you have, is that recognized Native American, the
13 list, don't you think that you have some that are not
14 federally recognized on there?

15 MR. BRITT: They're all listed on the BIA,
16 they're all listed with the BIA. We checked them,
17 unless they got delisted.

18 MR. CHAD SMITH: I think Phil means about
19 tribes that are not federally recognized, and they have
20 said that in much of this, or all of this, a group of
21 Indians, a tribal community that is not federally
22 recognized can partner with one of the tribes that is
23 federally recognized in all of this. There's a part to
24 play, a part in it for any tribal group of Native
0136

1 Americans.

2 MR. GUNDRUM: There are groups that
3 respect all groups, like the Kawaiisu, we've actually tried
4 to consult on on some level, at one point and it didn't
5 go anywhere, and I talked to the Native American
6 Heritage Commission in Sacramento. They're trying to
7 update a tribal member list and things like that, so if
8 anybody can provide any assistance with who to talk to.

9 But again, we're kind of constrained,
10 being a federal installation, dealing with federal
11 recognized rights, that we're trying to open it, you
12 know, we can work on these, invite these groups in as
13 informal partners or to have them partner with a
14 federally recognized group, I think that would be
15 acceptable to them.

16 MR. BINTER: Sacramento, Ft. Mojave was
17 fortunate to have gone there and talked to some of those
18 people that have maybe seven or eight in a group. We
19 partied together, you know, and there's one thing I did
20 say, you know, because of what we do here, the
21 relationship from one tribe to another tribe was so
22 close, and, you know, even you go to school in Needles,
23 after a while you work with a white guy, you know,

24 you're talking like a Mojave after a bit, you know, you
0137

1 see something wrong you say "Ahhhhh," you say at him,
2 "Look at him, you know, he's talking funny," they're
3 talking like us.

4 We've been through this to a point, you
5 know, after a while, you know, that goal, you know, of
6 being prejudice with another American Indian person has
7 gone away. Some of us are married to white women, you
8 know, some of us don't have kids, some of us do have
9 kids, you know, they grew up, they're more Indian now,
10 and that's the way it goes, you know.

11 But, you know, up there I did tell them we
12 did this, but, you know, you guys are with another group
13 of Indians over here, you guys are cousins in there
14 already, why can't you just be a part of that, you know,
15 and make that a bigger group and call it something
16 within your -- their names, their tribes, that will
17 work.

18 I heard, you know, they were working on it
19 I don't know if they really succeeded, but I do know
20 that some of their stuff down in Nevada, they were doing
21 that also and I said "Well, you know, if nobody else is
22 taking the credit, I will."

23 (Laughter.)

24 MR. BINTER: But, you know, it's just an
0138

1 idea and thought, and it's been working, how could you
2 put that, more understanding of the fact that they, they
3 work, they were, people at one time with a great number,
4 but they've all died because of something.

5 What have you guys brought? Alcoholism,
6 diabetes and all of that type of stuff, you know, I'm
7 sorry, but this is the way it is, you know.

8 MR. RAY: Bomb fallout in Nevada.

9 MR. BINTER: Sometimes, you know, you
10 would be -- it's really how you talk to a Native
11 American to get his attention, sympathize with him,
12 understand his problem, but in order to do that you have
13 to be a part of that group, get with him, talk to us,
14 you know, don't sit back and say we'll get back to you
15 another date, learn about our culture. Isn't that what
16 archaeologists do? Learn the culture, get with the
17 people, understand them.

18 MR. GUNDRUM: A different process.

19 Anthropologists first, archeologists second.

20 MR. BINTER: Exactly. You know we're
21 talking with you people hoping we'll get that same type
22 of response, I see it, but don't tell us, do this, do
23 that, some of us, some of us will rebel, you know, we
24 still haven't lost that Indian thing, you know, we are
0139

1 going to do what we want to.

2 MR. GUNDRUM: It's a process, you know,
3 continuous dialogue, and getting to know and trust each
4 other over a period of time, that this will move
5 forward, and I think everybody here understands that,
6 you know, we're asking, we want to get these sort of
7 things in place, we think it's beneficial to both. We
8 know it's going to take time. We know some groups may

9 not want to do it, and I think you know if we work
 10 together on a continual basis over years we'll develop
 11 that trust and relationship.
 12 MR. BINTER: If you accomplish one task
 13 and look around, you would be surprised that the other
 14 people are looking in the window to be a part of it too.
 15 Get two and then you'll have three, they'll come, but
 16 you've just got to win their respect.
 17 MR. CHAVEZ: Just build it, don't tell us.
 18 MR. BINTER: Like a spirit, you know, it's
 19 that way, we have people here in all of our entities in
 20 Ft. Mojave, we don't have Indian people running it, but
 21 we want to learn how to do it too. We respect that, you
 22 know, so we're the -- I worked for the water department
 23 a number of years, and I was the first of the Ft. Mojave
 24 tribe to ever get certified in that field.
 0140
 1 I'm a professional water person. Along
 2 with that I am also a diabetic -- dietitian, I went to
 3 school in San Francisco, took a class, school, I went to
 4 the cooking Olympics, myself and his ex-wife, so, you
 5 know, that's what we do.
 6 MR. CHAVEZ: I have one little thing to
 7 say.
 8 I see our people nationwide, I'm not
 9 talking about just this area, but across the whole
 10 nation coming back together as people, communicating
 11 better which Europeans provided a way of Internet and
 12 whatnot.
 13 And one of the plans of the United States
 14 government way back when, part of the genocide was
 15 divide and conquer, pull people away from their families
 16 and they wouldn't survive.
 17 But what they've created was this
 18 relocation problem, situation where they married into
 19 other tribes which made them stronger, they just
 20 defeated the whole purpose.
 21 And now they're using that unknowingly to
 22 get back.
 23 I just had to say that because the
 24 attempt of the genocide at that time didn't work because
 0141
 1 we do have somebody watching over us, believe it or not.
 2 That's it. Let's go eat.
 3 MR. BRITT: Folks, thanks everybody. I
 4 really do appreciate the dialogue and the conversation.
 5 We'll meet back in here at 7:00 tonight. Chad has
 6 arranged for the Ft. Mojave dance troop to be here, it
 7 will be informal, probably last about an hour and a
 8 half, a couple hours.
 9 MR. CHAD SMITH: Probably dance all night
 10 We'll build a fire out back.
 11 MR. BRITT: The door locks when you leave,
 12 so I'll see you up here a little before 7:00. Thank you
 13 all.
 14 (The meeting adjourned at 4:38 p.m.)
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 4
 5 I, DENNIS D. STEINER, CSR #6, hereby certify
 6 that:
 7 I was present for the purposes of acting as
 8 notary public and certified shorthand reporter;
 9 That the transcript that appears hereinbefore
 10 was transcribed by me as herein appears to the best of
 11 my knowledge, skill and ability.
 12
 13
 14
 15 _____
 16 Dennis D. Steiner
 17
 18
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 4 FT. IRWIN, NTC - NATIVE AMERICAN TRIBAL MEETING
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 8 3 OCTOBER, 2003
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 11 FT. MOHAVE AVI RESORT
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 14 LAUGHLIN, NEVADA
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 22 REPORTED BY: DENNIS D. STEINER, CSR #6, RMR
 23 BONANZA REPORTING - 2320 PASEO DEL PRADO, B-
 106
 24 Las Vegas, NEVADA
 25 (702) 360-3206

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IN ATTENDANCE:

5

6

Tad Britt

Paige Peyton

7

Susan Enscoe

Darrell Gundrum

8

Philbert Swain

Raphella Spute

9

Lalovi Miller

Gerald Kane

10

Jennifer Shore

Lee Chavez

11

Lt. Col. Jeffrey Ogden

Mickey Quillman

12

Felton Binter

Bob Horalek

13

Chad Smith

Edith Smith

14

Donald Smith

Gaye Ray

15

Edward Tito Smith

Mohammed Bari

16

Gloria Hernandez

Kenny Anderson

17

Gina Foringer

Llewellyn Barrackman

18

Betty Barrackman

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FT. MOHAVE, AVI RESORT, LAUGHLIN, NEVADA

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FRIDAY, 3 OCTOBER, 2003, 9:00 A.M.

4

MR. BRITT: Folks, if I could have your
attention we'll get started on day two of our meeting
here.

7

I'd like to take a minute and welcome some
new guests, Mr. Philbert Swain, Moapa Tribe and the
Smiths from Chemehuevi

9

, welcome, you all. We'll make

10

sure you all get copies of everything we talked about
yesterday so that you will be fully informed.

12

What we'd like to do today is start off by
once again saying the pledge of allegiance, and I'd like
to get Mr. Smith to have a blessing here.

15

(Pledge of allegiance)

16

MR. CHAD SMITH: I'd like to have a good
Mohave blessing.

18

I'm not a tribal member, but that sacred
mountain up there says a lot to me, and when I first
came here in 1999 on one of my trips over, moving over

21 from San Carlos, I saw Apache spirits, the gong, the
22 mountain spirits in the clouds down by Vidal, and I knew
23 then as some of the Mohave elders had already told me
24 that in ancient times Apache people came this way, and
25 were close friends with the Mohave and some of the great
0004

1 supernatural beings that helped the Apache people over
2 the thousands of years came this way, only that far
3 because all of this is of the power of the Mohave
4 culture, religion and spirit.

5 And I only know that many of the tribes
6 that live far from here trace their origins and hold in
7 religious reverence this mountain called Abiquamay,
8 where the Mohave creator lived, and went to another
9 plane of existence, and his brother, Matavelia, helped
10 the Mohave people in those times beyond memory, time
11 immoral.

12 But I'll say just in English a few words,
13 and we use the cat-tail pollen for our blessing in the
14 Apache way, as I will do, but this is somewhat generic
15 out of respect for Mohave religion which is very real
16 and very strong, even in Apache culture, it's highly
17 respected, and as an anthropologist you can either be
18 objective and believe in no religions or you can believe
19 in all religions, which I do.

20 Mother Earth, Father Sky, continue to
21 bless and protect all of us, all of the native people
22 and the Army representatives and our country in these
23 times of which we're all a part, with the good and the
24 unpleasant from the past, and watch over our country and
25 all of our people and particularly help those who train
0005

1 and have to go in harm's way to be lucky, and to come
2 back, and as we try to blend the concerns for the
3 ancient places and the lands of the Indian people with
4 what Army has to do; let us, all of us, keep in mind
5 that the Indian people are the spiritual stewards of
6 these lands. Okay.

7 MR. BRITT: Thank you, Mr. Smith.

8 We've got a seat up here. Sir, you can
9 sit up here.

10 What I'd like to do now is to bring, give
11 you an update on the land expansion results,
12 particularly the cultural resource surveys that have
13 been conducted in preparation for the proposed land
14 expansion.

15 But to begin with, I've just got to give
16 you an overall status of the Ft. Irwin and the cultural
17 resource management program. This is a snapshot of what
18 they have at this moment.

19 Ft. Irwin comprises over 750,000 acres.

20 That's over a thousand square miles.

21 Approximately thirty percent of the
22 installation has been inventoried for cultural
23 resources, and that involves systematic pedestrian
24 surveys, archeologists, cultural resource managers going
25 out into the field documenting sites, recording sites,
0006

1 making site revisits and updates.
2 A little over a thousand sites have been

3 recorded at Ft. Irwin.

4 A little over 600 have been recorded
5 within Ft. Irwin proper, and then the last year -- Well,
6 last year we did a sample survey of the expansion areas,
7 and we recorded 245 sites, but much of this property had
8 been in BLM lands and they had recorded sites, so in the
9 two expansion areas the Avawatz and Superior we have
10 about 417 sites recorded, or 429.

11 Of all of these thousand sites a little
12 over 350 have been evaluated for their significance
13 under the four criteria for inclusion in the national
14 register of historic places.

15 58 of those have been determined
16 significant. They meet one of those criteria of
17 eligibility, and they have contributions on the local,
18 state and national level, or one of those or all of
19 those, to be significant in our heritage, those sites
20 are protected.

21 What's important to realize is all of the
22 sites that have not been evaluated, the remaining 538
23 sites, those are protected as if they were eligible.

24 They're afforded the same amount of
25 protection. There's no impacts allowed at those sites.
0007

1 Ft. Irwin has an active program now of going back and
2 revisiting those sites to evaluate them and see what,
3 you know, what kind of information they contain, how can
4 they contribute to a better understanding of the past.
5 Now, let's talk about the land expansion.

6 Ft. Irwin is this area in black. It's
7 composed of the center, Leach Lake, Gurney Range and
8 also the NASA Goldstone site.

9 Last year about 110,000 acres were
10 withdrawn from the Bureau of Land Management; the large
11 majority of it was withdrawn from what -- what we refer
12 to as the Superior Basin over here, and then on the east
13 is what we call the Avawatz region.

14 What we've got is a map of the Ft. Irwin
15 and the training areas, the areas that are delineated
16 in the dark blue have been evaluated for having high
17 impacts to training; the areas in light blue have medium
18 impacts, and then the areas in white have no training
19 whatsoever, and those are typically in sensitive areas,
20 whether it be cultural resources, Lane Mountain milk
21 vetch, other types of environmental resources.

22 There's no training allowed on the playas
23 out there, a lot of environmental restrictions.

24 But in the proposed date of 2006 they want
25 to open this up and train in these expansion areas,
0008

1 primarily the superior, the powerline corridor and in
2 the Avawatz.

3 Give him a minute to get settled. Okay.
4 We'll move right along.

5 Basically we're looking at about -- the
6 Avawatz 2000 acres, we did a 25 percent sample survey;
7 powerline, we did 124 acres, another 25 percent
8 surveyed, and then in the Superior Valley when we were
9 -- initially we were going to do a 50 percent survey,
10 but because of the restrictions of Lane mountain milk

11 vetch and some other concerns we reduced our area to 35
12 percent.

13 We ended up looking at a little over
14 almost 25,000 acres last year.

15 These are some pictures that were taken
16 during the survey to document some of the types of
17 sites.

18 Here's a small lithic site right here
19 located on a beach ridge next to a playa, I believe
20 that's Superior Lake.

21 What's important to note is that the
22 Superior Basin on the west and the Avawatz on the east
23 are geomorphically very diverse.

24 The Superior Basin is much more dynamic.
25 There's a lot more natural environmental processes going
0009

1 there.

2 We have what we call the sand sheets
3 because the wind is coming from the west, it's going to
4 cross the lakebeds picking up sediment and redepositing
5 it to the east of the lake; and the Avawatz, let's see,
6 in the Avawatz it's much older, more dynamic, and I'll
7 show you some features that characterize that.

8 This is a typical basalt quarry. Ft.
9 Irwin has a lot of lithic resources, a lot of basalt,
10 basically two types, fine-grained and coarse. Coarse is
11 used for mannos and metates, and fine-grain is used for
12 chip tools.

13 Here we are in Avawatz, a much older, much
14 more stable geomorphic setting.

15 These surfaces here, this is what we call
16 the desert pavement. You've got finely sorted rocks
17 embedded, just like a pavement. Many of these surfaces
18 are at least ten thousand years old or older.

19 They predate human existence as we know
20 it.

21 So -- and we could look at things to date
22 the surfaces such as the amount of -- the rind on the
23 rocks, how dark they are, minerals collect on these
24 rocks at a slow rate and they can measure those and date
25 the ages of these surfaces.
0010

1 What I'd like to do today is to talk about
2 two different types of sites that are probably the two
3 most significant types of sites at Ft. Irwin
4 prehistorically. Those are lithic and habitation sites.

5 And what we did kind of as an aside to
6 determine where we were going to survey during the land
7 expansion is we worked with Darrell and the California
8 State Historic Preservation Office, and we developed a
9 plan to devise a predictive model for finding sites, and
10 basically the model, the purpose of the model was to
11 determine where sites are, where sites aren't, and what
12 methods we should use to recover information where the
13 sites are likely to be found.

14 And what we started off to build this
15 model is we took all of the archeology sites and then we
16 subdivided them into separate groups, and what we're
17 looking at lithic reduction sites, chipping stations,
18 quarry stations, and what we did is we plotted those as

19 their own little entity.
 20 And these are the amount of sites that we
 21 -- the total amount of lithic sites that were recorded
 22 prior to our survey last year. Do you see they're
 23 scattered across, they're clustered in some areas across
 24 the landscape.
 25 We used this data to prepare a
 0011
 1 favorability map.
 2 The favorability map is basically telling
 3 us is -- it's ranked from very low to very high
 4 favorability, with a very high favorability on this map
 5 being depicted in dark red.
 6 It's a color scale, gradation.
 7 The areas with high probability are
 8 clustered around the sites that we've already
 9 identified. That makes sense. We know that's where
 10 sites are, that's where we're going to find. We took a
 11 lot of variables into account, the geomorphology,
 12 distance to water, elevation, slope, aspect, soil
 13 moisture content.
 14 This is what I was talking to Lee -- we
 15 worked with some geomorphologists out of the Desert
 16 Research Institute, and some geographers to prepare this
 17 model, it's not just archeologists who are having their
 18 input in here.
 19 So we developed these maps, and then we
 20 went out and actually did our survey, and we found these
 21 new sites that are marked in black.
 22 As you can see, they don't always fall in
 23 the high probability areas, so what we did is we took
 24 the data from this survey, put it in our model, reran
 25 the numbers, and what we have here is a new favorability
 0012
 1 map.
 2 And there's a couple of things I want to
 3 point out here that are pretty significant, is that --
 4 one is that lithic sites tend to occur in very specific
 5 locations. The areas that are marked in dark red, or
 6 light red.
 7 There's some transition, like in here, so
 8 you basically go from yellow to dark red.
 9 What that means is that we as
 10 archeologists can target these areas to go and study
 11 there. We can actually exclude some areas from study.
 12 What this means for the Army is that this frees up more
 13 land for them.
 14 Again, it excludes area for study that
 15 they have to spend money on, with a certain level of
 16 probability statistically that can be proven that they
 17 can open up these areas for training. It's important
 18 for those two reasons.
 19 What I'll do is I'll talk back and forth,
 20 and what I'd like to do is show you by illustration,
 21 look at the difference in red on this map and the red on
 22 this map, there's much more high probability area here
 23 and as we collected more data, ran the model, we reduced
 24 that.
 25 So again we can be more specific in
 0013

1 targeting sites as well as opening up areas of training.
 2 Now, we'll look at habitation sites, these
 3 are probably the most significant types of sites
 4 culturally at Ft. Irwin. These are prehistoric
 5 habitation sites. There's not near as many of these as
 6 lithic sites. Again, they're scattered across the
 7 landscape.
 8 We took the same approach, we took the
 9 original data, ran the computer models, generated these
 10 favorability maps, again the same color scheme; dark
 11 green is low; dark red is high probability.
 12 We ran this map, we went out and we
 13 surveyed our areas last year, and it's important to note
 14 that there's very little probability in Avawatz, and
 15 we've only got two sites here.
 16 Our model did extremely well, because you
 17 look here, and these are our new sites; found them right
 18 where we thought we would around the playas; found a few
 19 more up in the uplands in these areas -- a little red in
 20 here where we had some high probability areas.
 21 We've got these new sites, and again we
 22 ran our models, and again it allows us to focus on
 23 specific geomorphic land forms or landscapes out there
 24 that would be more likely to contain these types of
 25 sites than others.
 0014
 1 Again, it's the same thing, we can clear
 2 more land quickly for training purposes and as well as
 3 protect the more sensitive areas for archeological and
 4 cultural resource sites, so it's a great tool for
 5 evaluating, for finding and evaluating sites.
 6 I'll just go back and forth again to show
 7 you the difference.
 8 What this chart means is kind of what I
 9 said, but it quantifies it.
 10 It puts numbers in and backs it up. Half
 11 the habitation site, 48 percent occur in a very small
 12 portion of Ft. Irwin, less than -- or seven percent of
 13 the property.
 14 The same thing with rock art. Lithic
 15 sites as you can tell were a little bit more scattered.
 16 And we also looked at historic sites. We looked at
 17 mining and ranching sites and, again they're confined to
 18 very specific land forms at Ft. Irwin.
 19 So this helps us a lot. It's a very
 20 useful tool in determining where sites are and where
 21 they're not likely to be.
 22 We've also continued to improve the model,
 23 FICRD is the Ft. Irwin Cultural Resource Data Base.
 24 When we were preparing the model to get
 25 into a spreadsheet form, we wanted to get to more of a
 0015
 1 relational data base, not a data base for a developer,
 2 but this is what our geographer did, and basically makes
 3 the tool much more flexible and allows us to ask and
 4 address many more different types of research questions
 5 as well as management questions.
 6 And this is a schematic of the way we
 7 redesigned the data base. What it is now, it's a web
 8 based format so that researchers from not only within

9 Ft. Irwin but those that have been given access outside
10 such as our contractors can go in and do queries, they
11 can log in from their offices, whether it be in Las
12 Vegas or Texas, and do a lot of their homework before
13 they ever get in the field, and these are just some
14 examples of the different types of information.

15 Once they find the information, then
16 they're also required to enter the information in this,
17 and again they can do that in their office, whether it
18 be Las Vegas or Redlands or somewhere.

19 And these are different types of questions
20 you can -- or information that you could add, different
21 site types, different types of risk, try to quantify
22 risk of different types of impacts, whether it be
23 training or natural.

24 Again, this just gives you an example of
25 the different types of categories, different types of
0016

1 analysis that have been conducted. That's it for the
2 land expansion.

3 I'd like to take a minute and see if you
4 have any questions. I know that we did send out a copy
5 of the survey report, a draft survey report to all of
6 the tribes.

7 You all should have gotten them, and any
8 kind of general questions. I don't want to go into any
9 specifics about that one report, but I'd be happy to
10 answer any questions at this time.

11 MR. CHAD SMITH: I passed around a copy of
12 the news update from the San Bernardino Sun front page
13 two days ago, that the draft EIS is being revised and
14 is expected to be released December 1st.

15 I spoke with Mickey, and he said that
16 we're going to get a copy pretty soon of some changes
17 that have been made to the cultural resource survey,
18 archeological survey reports, and some of my comments
19 will pertain to the cultural resource integrated
20 management plan and the archeological predictive model
21 generated under which some of the work was done, and
22 more of my comments will pertain to the recommendation
23 on the part of the archeological consultants that did
24 the work that sites are not eligible for inclusion to
25 the national register where within those sites they did
0017

1 shovel test units and came up with subsurface artifacts
2 and under the archeological predictive model they
3 attribute the presence of those subsurface artifacts
4 which are mostly flakes of stone from lithic manufacture
5 activities to bioturbation where rodents and other
6 processes have mixed these things.

7 And I included a copy of the June 13th
8 letter about the fiberoptic line where some of the sites
9 had similar interpretations of non-eligibility when in
10 one of the sites numerous subsurface artifacts were
11 encountered, and in I think sixteen shovel test units,
12 twelve of them came up hot to down below forty
13 centimeters below surface with artifacts, and it seems
14 to me and several other archeologists I've discussed
15 this with, including from Geo-Marine, that there's a
16 buried cultural stratum there, and on survey you may

17 only see the results of lithic manufacture.

18 But elsewhere within that site there may
19 well be roasting pits and other habitation features that
20 are masked by the veneer of the wind-blown sands and
21 that -- You know -- we've got some big problems with --
22 with the approach, since off the installation on BLM
23 lands under the state karadepts [caretakers] approach were
small

24 lithic scatters or sites where lithics are encountered,
25 that when you shovel test and come up with subsurface
0018

1 artifacts, and this is what I'm in an uncomfortable
2 position to have to recommend further testing of one
3 meter test excavation units or even backhoe trenches,
4 and alternatively as I've expressed to Darrell,
5 eligibility could be revisited, and those sites could be
6 considered eligible for the register, and determined
7 eligible for the register by Army, and the undertaking
8 at hand of the land expansion is not a ground-disturbing
9 activity, and when maneuvers or other activities are
10 proposed in the area where those sites are, then the
11 decision could be made whether to do further testing for
12 eligibility and extent as well to find how far under the
13 sand these things go, and/or data recovery.

14 Preferably avoidance, even down to
15 protective fencing and those things.

16 I know when a new development like a
17 railroad is going to go through where a road or
18 fiberoptic, sometimes it's not possible, yet with
19 fiberoptic it can go to an aerial segment that spans the
20 site rather than going through the site. I've done that
21 numerous times elsewhere.

22 So we do have extensive comments which we
23 had not provided yet to CERL, your office back east
24 there, and to Darrell out there, and but I think that
25 some of the sites in the fiberoptic were in the
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1 expansion area as well, or at least the approach was
2 similar to that of T R C Mariah in the report itself,
3 and I really don't like a geomorphologist determining --
4 predetermining the possibility of site locations and
5 eligibility or non-eligibility through the archeological
6 predictive model, every predictive model I've ever dealt
7 with blows up in the face of the one developing it in
8 the field.

9 MR. BRITT: It's an iterative process.
10 I'll be first to tell you that. It's a refinement over
11 time. If I can -- can I interrupt and kind of --

12 MR. CHAD SMITH: I'm finished.

13 MR. BRITT: Right. Let me tell you about
14 our approach.

15 Prior to two or three years ago, when
16 Darrell came to Ft. Irwin, most of the archeological
17 surveys that were done were done solely by archeologists
18 looking for archeological sites.

19 Since Darrell has been out there we've
20 taken a more holistic multiple discipline approach. For
21 one thing most of the surveys done out there were purely
22 pedestrian. They didn't even carry a shovel with
23 them.

24 Again, these were done by archeologists.
25 There was no knowledge of the geomorphology, or, you
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1 know, other types of disciplines that we've integrated
2 into this approach.

3 What we've implemented is a more
4 systematic, more thorough multiple-discipline approach
5 to a better understanding. I'm not saying it's perfect
6 by any means, but what we've tried to do is -- I do want
7 to make a point, the geomorphologists, they're telling
8 us areas that have the potential to contain buried
9 deposits.

10 They're also telling us areas that have
11 the potential to contain buried deposits that have been
12 bioturbated, that is, they've been blown and blown and
13 rolled.

14 That's what happens a lot up here. That
15 doesn't mean that every site is not eligible or every
16 site that is not eligible.

17 What we've done, to paraphrase, is
18 typically we'll work with -- we'll have a group meeting,
19 the archeologists and the geomorphologists, the
20 geographer.

21 The geomorphologist and the archeologists
22 will conduct reconnaissance, look at aerial maps, go out
23 and make some spot checks in some areas.

24 Then the archeologist will go out
25 following a research design that is specific for that
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1 project. It may consist of pedestrian walkover with
2 selective shovel testing on desert pavements to confirm
3 that there is no potential for having buried deposits,
4 or it may be a systematic, every fifteen meters we dig
5 shovel test pits, we dig trenches. We did all of this
6 in the study last year.

7 We had a variety of methods.

8 Once the sites have been identified, then
9 once again the team of the geomorphologists and the
10 archeologists go back out there to collect their own
11 respective data, the archeologists, and then they work
12 together and they share their data, and sometimes it
13 consists of test units, shovel tests or backhoe
14 trenches, and we did all of this at Ft. Irwin.

15 I guess that's the point I'm trying to
16 make, is that we've thought about these things and we're
17 trying to implement those, and we will continue to do
18 that, but it is an iterative process and we're trying to
19 improve that, so maybe that clears it up.

20 But by no means if the site has deposits,
21 we have to look if there's some buried artifacts, we
22 have to look at each site on a case by case basis to
23 determine its significance, so I just wanted to make
24 that point clear.

25 And if it's not clear in the report we'll
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1 make sure that it gets clear.

2 MR. CHAD SMITH: And a couple of other
3 issues, primarily on powerline proposed expansion areas

4 MR. BRITT: Yes.

5 MR. CHAD SMITH: First, the utility

6 corridor in the California Desert Conservation area,
7 through there where the gas lines are and power lines,
8 you know, it's -- it was decided quite a while back to
9 have those developments within one straight line
10 corridor rather than a crazy quilt where it goes on the
11 engineer's determination, shortest distance between two
12 points is a straight line.

13 And there's a lot of public access that
14 takes place along that powerline, and, you know,
15 rockhounding, not so much looting of archeological sites
16 because many of the sites don't lend themselves to
17 people going and digging them up and finding things and
18 taking them.

19 But I don't know myself whether -- whether
20 there would be a new perimeter fencing at the edge of
21 powerline expansion and exclusion of people that are
22 used to driving their ATV's and dirt bikes back and
23 forth up and down that powerline, really from Barstow
24 all of the way to Baker or from Yermo all of the way to
25 Baker.

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1 And, you know, to me personally it would
2 be great if they were excluded from being able to use
3 that and, you know, we commented on the antiterrorism
4 protective fence project, that that was positive, but
5 felt that it should even be run up over the topography
6 that would make it difficult for people to penetrate the
7 facility, and as much to keep Army units in as to keep
8 others out, because another issue several years ago, we
9 went to where a detachment had exited the fort and gone
10 out onto the wet Cronies Lake and got stuck and
11 inadvertently strayed outside the post by over ten
12 miles.

13 And as we get down into that area that's
14 where there are known and documented Mohave cultural
15 resources including cremations, and I know that Mr.
16 Barrickman and Minerva Jenkins and others of the tribe
17 in past years have gone to that area with BLM to look at
18 some of the sites and even to do some traditional
19 activities to help those whose remains were there to
20 rest peacefully and to look over these things.

21 And that's such a sensitive area that we
22 do have major concerns right there, and as we talked
23 yesterday, there's the big petroglyph site at the Whale
24 landform that's adjacent to there which I'm absolutely
25 certain is sacred to more than one of the tribes present

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1 here today.

2 And so we have those concerns, and could
3 you put the map back up?

4 MR. BRITT: Sure.

5 MR. CHAD SMITH: That shows powerline and
6 Red Pass -- it's a little divergence, can you point it
7 out, Red Pass?

8 MR. BRITT: Yes, right in here.

9 MR. CHAD SMITH: Yes.

10 COL. FLINN: No, it's down there, it's
11 north of Whale.

12 MR. GUNDRUM: This is the Whale right
13 here, Red Pass

14 MR. BRITT: Okay.

15 MR. CHAD SMITH: The yellow line is the
16 exterior boundary and right in there the yellow line is
17 also the utility's corridor, and there is yet another
18 gas line that's more than just proposed that would be
19 Kern River Three, and Kern River expansion and the
20 original Kern River gas line had actually gone on the
21 east side of Red Pass across a small portion of Ft.
22 Irwin itself.

23 It's -- it's sort of a history of
24 archeologists, it's not real well-known and doesn't
25 really have to go beyond the room itself, but in the
0025

1 '70's when Doctor Claude Warren (phonetic) was doing surveys
2 in that area, some of his crew was moonlighting as
3 scavengers.

4 And in that -- in the mountain, the little
5 hills that are pretty substantial hills right southwest
6 of the pass along that yellow line, there's a dry lake
7 masonry within the corridor that I went up and looked at
8 when I was out there on that Kern River pipeline, you
9 know, at first it looked like what some call a hunting
10 blind or wind shelter or lookout post that the Mojaves
11 often have for their sentries to see if others were
12 coming into an area where their people were, and I got
13 up there and it was obviously recent, historic, maybe
14 from, you know, I thought at first from the forty's a
15 patent or something like that because there is a rock
16 alignment that spells out the name "Joe, J-o-e," and
17 there is also a .50 caliber round, expended, brass that
18 I left in situ there, and these guys were coming back
19 out on weekends when the archeologists, the real
20 archeologists were gone, and going onto the post, and
21 they had connections with personnel that would leave M
22 16's or C 4 or other items, and they'd load them up and
23 take them back there where they had the Jeep, they'd go
24 out on dirt bikes and they were trading these weapons
25 for drugs at San Diego, and some of them got caught;
0026

1 some of them didn't.

2 And it would be actually included within
3 the post where this archeological site is. It's, you
4 know, to me even if it's less than 50 years old it's the
5 result of human activity.

6 MR. BRITT: That's right.

7 MR. CHAD SMITH: And there's still the
8 possibility of latent prints, I didn't touch the brass
9 being on that. It's even something that CID might need
10 to look into.

11 And shortly after this pretty small scale
12 scavenging of that nature the determined Wilson incident
13 took place at China Lake where Sidewinder missiles were
14 acquired and taken to Libya.

15 So it's kind of more something for a
16 history book or a novel or something like that, but
17 Doctor Warren says it really -- he fired the people when
18 he got an inkling of what was going on. It was back in
19 the '70's and that, but it gives our profession a bad
20 name that I just spread around myself, you know.

21 But it's something that people should

22 know, and a good reason for the protective fence and
23 patrols and that besides terrorism, there's the
24 scavaging and that that can be an ongoing problem.

25 MR. QUILLMAN: Sure.

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1 Let me jump in for a second. I'm Mickey
2 Quillman, I'm a Natural and Cultural Resources Manager
3 out at Ft. Irwin.

4 The way we're going to address the fence,
5 the boundaries of the expansion area, our intention is
6 to go along the powerline corridor, we're going to go in
7 500 yards from that, and we're going to put in a double
8 tank ditch and three-strand barbed-wire fence, similar
9 to what they've done at China Lake and that is to keep
10 people out, but it's also to keep the Army in.

11 A lot of these young men who come out of
12 training at Ft. Irwin are accountants from New York
13 City, they get out here at Ft. Irwin and they have never
14 seen so far in their whole life. I mean in New York
15 City you can probably see less than two blocks. Out
16 here they can see fifty miles, and it's easy for these
17 guys to get lost, so what we're going to do is put in
18 this double tank ditch 500 yards north of the power
19 corridor because we don't want to knock out power, we
20 don't want these soldiers out there hitting power lines
21 or breaking gaslines, getting killed, and we don't want
22 somebody inadvertently straying onto Ft. Irwin and
23 getting involved in military maneuvers.

24 So that's what's going to happen around
25 the entire expansion area. That's what we've proposed.
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1 I'm not sure how we'll address the areas
2 really high up over the hills, but we're going to make
3 every effort to keep folks from doing that and keep the
4 people who are training at Ft. Irwin within the confines
5 of the installation itself.

6 MR. CHAD SMITH: Okay.

7 COL. FLINN: I'll add onto that. I'm
8 Col. Flinn, I'm the Deputy Chief of Staff at Ft. Irwin.

9 The -- the unfortunate incident that
10 happened out there where they strayed off of the
11 installation, it's a little bit reminiscent of what
12 happened to that maintenance company in Iraq.

13 These were a bunch of soldiers who were
14 trying to do the Lord's work in the middle of the night,
15 in adverse weather conditions, and they got lost, pure
16 and simple.

17 Our -- our goal was to keep all of our
18 soldiers on Ft. Irwin, because that's where we have set
19 up the facilities to give them the opportunity to do
20 what they're supposed to be able to do.

21 It's where we have our observer
22 controllers, who are the teachers that help these units
23 in their training, and look at what's going on to help
24 them improve.

25 Our fiberoptic network that we're

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1 proposing is designed to move information because what
2 we ultimately want is we want every vehicle to have
3 instrumentation package on it that has a GPS device, a

4 radio transmitter that transmits its location about
5 every three seconds back to our command and control
6 facility, using the instrumentation and information that
7 comes with fiberoptic net.

8 Our goal is to have one hundred percent
9 track of everybody and then if somebody begins to stray
10 outside the exercise area we can alert one of our active
11 duty soldiers assigned to Ft. Irwin to go out there and
12 bring them back into the game, if you will, and so this
13 all has an effect here in order to, one, improve the
14 realism of our training, and two, keep the training in
15 the corporate sandbox, if you will, of Ft. Irwin.

16 MR. BRITT: Thank you.

17 What I'd like to do now, do you want me
18 to go and proceed with my next talk, or do we want to
19 cover something?

20 MR. CHAD SMITH: I don't know if any of
21 the other tribal representatives have any questions or
22 comments

23 MR. BRITT: What I'll do is I'll talk
24 about the cultural affiliation study, take a break and
25 we have some very honored guests here, we're honored to
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1 have these very distinguished guests here to talk a
2 little bit about the Mohave culture and tell us some
3 more. So bear with me just a second.

4 Would you pass out those reports? If you
5 could.

6 Mr. Gundrum is going to pass out a copy of
7 this cultural affiliation study that we had conducted
8 for the installation last year, it's a draft report,
9 just so as to give us a tool to begin to help facilitate
10 nation to nation consultation.

11 We feel like this is a good objective
12 synopsis contact period up to the present, by no means
13 does it include everything.

14 It's a great starting point. We'll be
15 glad to have you read it, provide us with comments, it's
16 not a 106 document, it doesn't go to the SHPO, we'll
17 probably send a copy so that, you know, they would
18 appreciate it, but it's not a requirement document,
19 it's an independent study that we did for Ft. Irwin, so
20 what I'd like to do today is just go over it very
21 briefly, talk about some of the topics, it was prepared
22 by David Earle, he lives on the coast, not back -- I
23 can't remember exactly what town he lives in, but he's a
24 native Californian.

25 And some of the topics he discusses is the
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1 Mohave desert environment, the social organization of
2 the different tribes and Spanish contact. Then he lists
3 the major indigenous groups at the time of the Spanish
4 contact. Those were the Serrano, the Chemehuevi,
5 Southern Paiute, the Mojaves, the Kwasu, and the Panet
6 or Timbisha Shoshone.

7 Do we have enough copies?

8 He talks about native places and trails.

9 I'm not going to try to pronounce the Indian names, the
10 ones I don't know how.

11 I'll say the Avawatz Mountain, Cave

12 Springs some of those are on or extremely close to Ft.
13 Irwin, or certainly within the area, area of potential
14 effect encompasses parts of Ft. Irwin, the Granite
15 Mountains, Soda Mountains, the whole Soda Mountain
16 region, Owl Hole Springs in the valley, Owl Head
17 Mountains, Bitter Springs, the Calico Mountains or the
18 Paradise Mountains, and then the Cave Caga Mountains.

19 He also gets into detail talking about the
20 substance level, the plants, the animals, the salt --
21 the salt deposits around the Avawatz Mountains, those
22 are very important to the indigenous groups.

23 He talks about the seasonal changes and
24 the way that the groups moved around different times of
25 years to collect pinion nuts, bighorn sheep, whatever,
0032

1 different seasonal -- what archeologists or
2 anthropologists call seasonal rounds.

3 He also looks at the environment and comes
4 up with some estimates of given these different
5 scenarios of the vegetation and the plant life and
6 animal life, how -- what is the carrying capacity of the
7 environment, how many people could that -- could the
8 plants and animals support at one given time or during
9 one season.

10 And from that he extrapolates potential
11 tribal population estimates.

12 Then he moves on into the more of the
13 historic period, the tribal interactions after 1820,
14 begins to discuss intertribal conflicts.

15 He mentions -- of course, he talks about
16 the linguistics, the common shared languages, the
17 different languages, marriage practices, customs, the
18 whole social implications and ramifications of different
19 tribes living and moving about in this environment.

20 Then he talks about the impact upon the
21 horse as its existence as well as politics, some tribes
22 got the horse before other tribes, and, of course, that
23 was -- it created an imbalance of power politically, and
24 it also had implications to other tribes.

25 And, of course, once the cattle were
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1 moved in there was a practice of stock raiding or we what
2 call stock appropriations.

3 And then again the horse again affected
4 the way the movements and tribal movements and
5 relocation.

6 Moving on to the 1840's and 50's, the
7 impact of the American immigrants moving to California
8 to the east and from California -- to the east and from
9 the eastern states to the west.

10 Then we'll get into post civil war, we
11 talk about the mining and military confrontations, the
12 interactions with the Native Americans. There's a lot
13 of ranching, a lot of Native Americans became cowboys
14 and ranchers, and then finally the development of the
15 reservation communities.

16 He gets into very detailed discussions
17 about the social, political dynamics and the concepts of
18 what is a tribe, how have they changed through time,
19 what have anthropologists and particularly

20 archeologists, how do they define tribes. It's
21 certainly not the way that the tribes as you all see it
22 defined what their tribe is.

23 It's a very good point he brings out, that
24 these interpretations that have been written down
25 through the years are not necessarily accurate or even
0034

1 close to being accurate, and he brings that out, and I
2 think that's one of the strong points of this report, is
3 that it's an objective report.

4 It raises a lot of questions and makes us
5 rethink the way -- or at least as anthropologists and
6 archeologists rethink the way that history has been
7 written.

8 He also talks about the group dynamics and
9 from what they were at the 20th Century, and I kind of
10 alluded a little bit to what they are today.

11 Basically four main groups at the
12 beginning of the 20th Century; the Chemeheuvi, the
13 Kawaiisu, Serrano and Mohave. As we know today there
14 are many different tribes and federally recognized,
15 there's Paiute, Shoshone, Chemeheuvi, Kawaiisu, many of
16 you are represented today, but if you can -- a little
17 over a hundred years ago there were four main groups,
18 and now we have many more than that.

19 The politics have changed, these cultures
20 are vibrant and very dynamic and very real today, as we
21 all know.

22 Again, this is a list of the tribes that
23 Ft. Irwin consults with.

24 Again, it's not -- it's not a final list,
25 it's not an exclusive list.
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1 We want to be inclusive, in fact, just
2 about a month or two ago we heard about the Bishop
3 Paiute, and he wanted to make sure they were at this
4 meeting and here at the table to hear what they had to
5 say.

6 But these are the 14 tribes that we are
7 actively consulting with now.

8 Yes, sir?

9 MR. TITO SMITH: The Kawaiisu is not a
10 federally recognized tribe. They are a tribe of
11 existence, a group living in Bakersfield-Tehachapi
12 area. They do have a chairman.

13 Did you make contact with them?

14 MR. BRITT: We've had contact -- Darrell
15 has had contact with them in the past.

16 We -- our relationship with non-federally
17 -- Well, on behalf of Ft. Irwin, as a Department of
18 Defense agency, the relationships you have with
19 federally recognized tribes and those that are
20 non-federally recognized is quite different, and to
21 invite a non-federally recognized tribe here, and I know
22 this can be interpreted many different ways, could be
23 viewed as unfair to basically bring a state recognized
24 tribe up to the same status as a federally recognized
25 tribe, and we wanted -- we want to consult with them,
0036

1 don't get me wrong, but we want to make sure that it's

2 fair and we're doing it within the laws that we have to
3 follow.

4 It's not to say we're not going to consult
5 with them or that we will not consider all of their
6 wishes.

7 It's just that it's done at a different
8 level.

9 I hope I made myself clear. We don't want
10 to discriminate, but we also want to be extremely fair
11 in the way that we consult on a nation to nation level,
12 and the federal -- basically the US government does not
13 recognize that as a -- as the same needs the definition
14 of a tribe as the legal definition.

15 MR. TITO SMITH: The fact that they give
16 meals on the 1934 act, a lot of us -- to us they're
17 recognized people. They still exist, they still have --
18 You know -- there's five people in their tribe that
19 still speak the language, but they are people.

20 MR. BRITT: We realize that.

21 MR. TITO SMITH: They are people and
22 they're within their area, we know the Kawaiisu are in
23 that area, and to be left out is to me --

24 MR. BRITT: They're not being left out,
25 don't get me wrong, they're not being left out, we are
0037

1 just negotiating on a nation to nation level

2 MR. TITO SMITH: They do nation to
3 nation, they just refused to organize under the United
4 States system. They're recognized by us, recognized by
5 them

6 MR. BRITT: We understand that, but the
7 laws don't allow us to -- the government to recognize
8 them on a nation to nation level.

9 They don't meet the criteria, it's not my
10 decision, it's what the law says and that's what we have
11 to do, as you know.

12 MR. CHAVEZ: You know who makes the law

13 MR. TITO SMITH: We recognize Kawaiisu
14 people

15 MR. BRITT: We understand that we
16 recognize them as well, they're just a little strong,
17 they refused to knuckle under

18 MR. TITO SMITH: They refused to buckle
19 under.

20 MR. BRITT: We respect them for that. We
21 also have to follow the law. We can't make special
22 exceptions that would be unfair to you, to every other
23 tribe in this room if we brought them up to the same
24 status. Our government won't allow us to do that.
25 That's the bottom line
0038

1 MR. GUNDRUM: We talked previously about
2 the situation and one way that can be sort of
3 circumvented or reconciled, is to have one of the
4 federally-recognized tribes basically sponsor them at a
5 meeting

6 MR. BRITT: Sure.

7 MR. GUNDRUM: And if anybody's willing to
8 do that I think on Ft. Irwin's behalf I don't think we
9 would have any problems interacting with Kawaiisu on a

10 regular basis.

11 We've tried to consult previously and
12 we've had some return mail, it's sort of hard for us to
13 get exact addresses and names, and if you could have the
14 names of the tribal leaders and provide that to us, we
15 would certainly try and incorporate them into this
16 process.

17 MR. TITO SMITH: Thank you.

18 MR. RAY: I don't see the Pahrump Paiutes
19 here. They're not federally recognized

20 MR. GUNDRUM: I'm not sure that they're a
21 federally-recognized tribe or not

22 MR. RAY: They're not.

23 MR. BRITT: But our intentions are
24 honorable, but we have to do what the law tells us to
25 do.

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1 Our hands are tied, and we hope that you
2 can appreciate or at least understand it, but we do, we
3 do make efforts along different lines of communication
4 to get their -- We treat them -- I hate this term -- but
5 as other interested parties.

6 MR. TITO SMITH: I've got a question on
7 that. If they're not recognized by the United States
8 Government, how did they get there? Were they there
9 when the government was negotiating?

10 MR. BRITT: I don't know.

11 MR. TITO SMITH: They're not recognized by
12 the government, United States government, how could they
13 get there, were they there when the government was
14 negotiating?

15 MR. BRITT: I don't know.

16 MR. TITO SMITH: Then you have to do your
17 homework. I mean some tribes are recognized.

18 MR. BRITT: Sure.

19 MR. DONALD SMITH: Some are organized.
20 You got to be organized to be recognized by the United
21 States government

22 MR. BRITT: Sure.

23 MR. BINTER: If you look back in history
24 we'll remember the non-Indian person, there was no
25 question, wars and stuff, nameless and homeless, look at
0040

1 Vietnam; left a lot of Vietnam, American -- that --

2 MR. DONALD SMITH: World War II, a lot of
3 displaced people there.

4 MR. BINTER: That's exactly where we're
5 at again

6 MR. DONALD SMITH: They're recognized,
7 they had to get citizenship somewhere

8 MR. GUNDRUM: I think even on some of
9 these non-federally recognized tribes, we addressed
10 those and we have certain current addresses listed for
11 some of these tribes, and it's just a matter of figuring
12 out the process of how we need to deal with them on a
13 federal level, and there's ways to work that out, and
14 that certainly can be done.

15 They can be sponsored, we can invite them
16 in to the NEPA process, the interested parties group,
17 there's lots of ways to get them involved in the

18 corporation and I believe we need to work together to do
19 that.

20 MR. BRITT: Yes, ma'am? Oh, I'm sorry.

21 Gerald --

22 MR. DONALD SMITH: See, they don't even
23 recognize you.

24 (Laughter)

25 MR. KANE: So what you're saying, then,
0041

1 is they can be brought in and they can communicate
2 whatever in regards to this, is that what I'm hearing?
3 Because --

4 MR. BRITT: They cannot be brought into
5 this level of meeting.

6 The law does not permit us.

7 MR. HORALEK: That's not true. Let me
8 kind of clarify, if I can a little bit.

9 We are in a limited scope of what we're
10 doing with Indian tribes, and when I say limited in
11 scope, the Army's interest is obviously what we've been
12 discussing yesterday and today.

13 Most of that is the cultural natural
14 affairs that we're dealing with as we're working with
15 Ft. Irwin, and obviously within that process we
16 recognize anybody that has an interest in that process.

17 Now, let's go back to this federally
18 recognized Indian Tribe. That's a whole different
19 concept.

20 First of all, that starts out with DOI
21 determining what they're going to deal with on their
22 Indian programs and all of the things that that means.

23 Now, if you go back a ways, that had to
24 do with reservations, payments, it had a lot of things
25 that created rights for recognized tribes and no rights
0042

1 for non-recognized tribes.

2 We're not dealing with any of that in this
3 process. That's purely outside our limit or concern.

4 The only -- the only right that we deal
5 with when we say federally recognized tribe is that at a
6 requirement level, at minimum we have to consult with
7 all recognized federal tribes involved with our land.
8 That's our minimum standard.

9 There is no maximum standard. We are
10 perfectly welcoming every other interested group,
11 tribes, however you wish to call them, and want them to
12 participate and desire them to do so, and they are
13 welcome at this level meeting. Does that make any sense
14 at all?

15 MR. BINTER: It makes a whole lot of
16 sense, but who are the people saying it? You know, do
17 we trust them? I think that's where it's at at this
18 point in time

19 MR. HORALEK: People saying that, whether
20 we would do that or not, the deputy commander I believe
21 would agree with me a hundred percent on this one, sir.

22 COL. FLINN: We're trying to be as
23 transparent as possible in the process, so we'll --
24 we're interested in hearing the voices of all of the
25 people who have a constituent interest in what's going

0043

1 on at Ft. Irwin

2 MR. CHAD SMITH: The Air Force at Nellis
3 has the Pahrump tribe, which is not federally recognized
4 as an equal partner at the table.

5 The federally recognized tribes in the
6 Native American program involvement, and it's really sad
7 the way some of these California tribes weren't
8 federally recognized in treaties that were signed, not
9 put in the false bottom of a statue in the basement of a
10 capitol building and never ratified by the senate. And
11 I mean in some situations under NAGPRA, under the
12 repatriation law, some of the tribes that are federally
13 recognized that have partnered with tribes that are not
14 to put into effect some return of human remains and
15 sacred objects, in coordination of those tribes.

16 So when you get into the interested party,
17 "interested person," is the legal phrase, even though
18 it's an organization, status in Section 106, it's often
19 secondary, and you won't receive copies of reports, full
20 copies of reports.

21 You might receive some without site
22 locations and other things in them, and I'm sure that
23 Ft. Irwin would consider positively working with those
24 non-federally recognized tribes at a higher level,
25 whether it's above the minimum involvement, to where for
0044

1 all practical purposes they can be recognized by DOD
2 with a place at the table and full involvement the same
3 as the other tribes, because it doesn't really get into
4 things that the Interior deals with.

5 And then you have the difference between
6 state recognized and federally recognized, and to the
7 extent that SEQA comes into play on the installations,
8 often it will be an environmental under the National
9 Environmental Policy Act where a state or Indian tribe
10 has more stringent regulations on the lands within that
11 overall jurisdiction, the federal government including
12 DOD goes with the highest common denominator, not the
13 lowest common denominator.

14 So I think that it will work, and again
15 you go with Nellis as the model, it works there and
16 nobody is, including their Solicitor or Adjutant General
17 office has raised the issue but we won't include
18 Pahrump. Because it's one of the main drivers of the
19 program.

20 And so it works.

21 MR. GUNDRUM: I think this is, you know,
22 where we would ask for your assistance, if you can give
23 us the correct contact, personnel for the tribal leaders
24 and numbers, we could certainly do that, and I think we
25 can all agree that the Kawaiisu are one of the major
0045

1 groups, particularly in the Ft. Irwin area

2 MR. BRITT: No doubt.

3 MR. GUNDRUM: And they would even argue
4 and they might be correct, that they were federally
5 recognized.

6 I think that would be the Kawaiisu
7 decision, is that they probably feel that they were

8 federally recognized at one time and that information
9 has simply been lost.

10 And I think we can all agree that it's
11 sort of a crazy system how tribes become federally
12 recognized, and some are not federally recognized.

13 MR. HORALEK: Let me clarify, Chad, you
14 reminded me.

15 There is one limited time when that
16 federal recognition does come into play for us, and you
17 mentioned it, that's when you have a NAGPRA issue.

18 We're only authorized to deal with
19 recognized tribes to try to resolve how those remains
20 should be turned over and to whom.

21 That's why I was thinking yesterday if we
22 can get a tribal group together organized under our
23 agreement where they will make that decision amongst
24 themselves, they will certainly have the right to
25 recognize these other so far not-recognized federal
0046

1 tribes and deal with that.

2 We're not interested in keeping remains
3 and creating museums or doing anything. We want them to
4 go to the right people.

5 But we can't take that liability of
6 bringing in non-federally recognized to make that
7 decision; but we can work with agreements where you
8 can.

9 MR. BRITT: Thank you all.

10 What I'd like to do now is bring you up
11 to status on consultations between Ft. Irwin and
12 nation-to-nation since, it's basically been going on
13 since the year 2000.

14 Some additional efforts were done back in
15 the late '90's but it's actively consistently been
16 pursued since 2000.

17 We're currently consulting with 14
18 federally recognized tribes. The tribes who have
19 responded of those 14 or who have expressed an interest
20 in consulting to date include the Timbisha Shoshone,
21 the Ft. Mojave, Moapa Paiute, San Manuel Band of Mission
22 Indians, Colorado Indians, Chemeheuvi, Las Vegas Paiute
23 and Kaibab.

24 MR. RAY: "Kaibab."

25 MR. BRITT: Excuse me. "Kaibab."

0047

1 Thank you.

2 So we've got a little over half, half of
3 the tribes responding back, but that doesn't mean that
4 we don't send, call -- send all information, all of the
5 information that you'll get today, the same information
6 was sent to these other tribes; for some reason they
7 weren't able to attend.

8 I understand that -- they may have had
9 other things that were more important, that's
10 certainly -- We respect them, but we also want to
11 make sure they're not left out of the consulting
12 process.

13 In this study that David Earle, he
14 contacted all of the tribes and found and we're
15 basically asking them "Are you aware of any village

16 sites, are you aware of any sacred places?"

17 I know it's been a long time since you've
18 had access to Ft. Irwin, but can you share with us any
19 information that you hold that's culturally significant
20 about Ft. Irwin from your tribe with us?

21 We basically have heard back from the
22 Timbisha and the Mojave, and some of the sacred places
23 that they did acknowledge that they weren't aware at
24 this time, and that's important to remember, because not
25 everybody was consulted, there may be elders in the
0048

1 tribe that have knowledge or information or stories,
2 recollections about parts or components of Ft. Irwin.

3 The important thing is to note at this
4 time we have no indication that the Timbisha or the
5 Mojave have any specific village site areas there.

6 MR. CHAD SMITH: Well --

7 MR. BRITT: We're not saying they aren't
8 out there. Don't get me wrong

9 MR. CHAD SMITH: There are numerous
10 places on the installation that are known and named in
11 the culture and the importance in the culture and many
12 of them are archeological sites like the lithic sites.

13 MR. BRITT: Sure.

14 MR. CHAD SMITH: The lakes themselves
15 being said to have been full of water and fish with
16 villages alongside the lakes, and travel in the lakes
17 and the river by canoe.

18 And as times have changed, we've seen many
19 letters from many agencies that are the standard
20 consultation letter that we're having such an such an
21 archeological survey done at such and such an area, if
22 your tribe knows of any important traditional cultural
23 places, sacred sites or other -- has other concerns,
24 please let us know and communicate this information to
25 us, many of us have a policy like at Nellis as well,
0049

1 that these ethnographic investigations have to have the
2 active involvement of knowledgeable tribal members as
3 consultants, and all -- much of the cultural offices do
4 is facilitate the people with the knowledge to
5 participate in the ethnographic studies.

6 But something we've come up against in the
7 past is where the information is requested, and it's not
8 on the reservation, it's not an activity of the tribe
9 that generates the need for this information because of
10 the Section 106 project, or Section 110 project, and we
11 require arrangements for adequate compensation for the
12 time and effort involved of the knowledgeable tribal
13 members who are mostly tribal elders to participate in
14 the process, and that doesn't come cheap.

15 The going rate amongst many tribes is
16 around \$50 an hour for those with the knowledge to go to
17 the area, to look at the place, the area of potential
18 effect of the undertaking, and apart from studying maps
19 and reports with the people in the tribal cultural
20 offices, it really puts it together to be at the place,
21 and then the old songs come back and there's keys in the
22 landscape as to where the place is in relation to the
23 proposed undertaking.

24 And as the chairperson of the Camp Verdi,
25 Apache Yavapai Nation expressed to S W C A archeological
0050

1 consultants, and at that time, fortunately for us, the
2 owner of the company, Steven W Carruthers, had been a
3 roommate of Vincent Randall back in the '60's at the
4 University of Arizona.

5 And he said, "Steve, your company and
6 these federal agencies pay somebody with a degree that
7 has the specialized knowledge, skills and abilities to
8 come out and do the pollen study, or the
9 geomorphological study or the geology study or hydrology
10 study, and no one else in the world has this special
11 knowledge but mostly these tribal elders.

12 And we've heard from some of these federal
13 agencies, "Well, we can't pay for information," and it's
14 not the information that they're paying for, they're
15 compensating these people adequately for their time and
16 effort to participate in the process, and respecting
17 them as consultants on the same level with other fields
18 that have this special knowledge that they've acquired
19 in the non-Indian university system through the western
20 way of learning, which can never approach the knowledge
21 that many of these Indian people have, and so I think
22 it's really key.

23 And not having read David Earle's report
24 yet, I'm sure that we'll have extensive comments and
25 probably recommend such things as further contacts with
0051

1 knowledgeable Ft. Mojave tribal members through our
2 office.

3 MR. BRITT: Sure.

4 MR. CHAD SMITH: And field visits with
5 them

6 MR. BRITT: Sure.

7 MR. CHAD SMITH: And sometimes the
8 information given in these in-field interviews and
9 office interviews is, "Yes, there's something important
10 out there, and I can't tell you anything more about
11 it."

12 MR. BRITT: We understand that and
13 respect that

14 MR. CHAD SMITH: And other times it can
15 be that there's -- like on Kern River pipeline over
16 there by Yermo.

17 There's these important trails and
18 intaglios, and other special places, important in Mohave
19 culture that weren't right within the right-of-way of
20 where the pipeline was going to go, and not even where
21 they were blading, but the viewshed aspect comes into
22 play, some of them you could throw a rock from the
23 right-of-way and it would land at the important cultural
24 site.

25 And we had to refer to "Well, between
0052

1 station such and such and such and such within that
2 square mile, within a quarter of a mile on the south
3 side or the north side there's this important cultural
4 place," and it all sort of came together out there at
5 the one big -- all lithic quarrying, lithic manufacture

6 sites on the powerline that actually has the basalt of
7 the hill, the butte that is the Whale, that's got
8 numerous petroglyph locations on the fort, but yet off
9 the fort it doesn't.

10 It just catches about a couple hundred
11 feet of that basalt at the very southern end of the land
12 form itself.

13 And that study for that Kern River
14 pipeline didn't even consider that, and so it was dozed
15 through and trenched through and, of course, in Kern
16 River One, back in I believe the 80's.

17 So when the expansion came through it had
18 to be brought to their attention that "You're going
19 right through a sacred site," and it is previously
20 disturbed and never should have been.

21 And there's -- with those things there's
22 some innovative ways that they could have put a dogleg
23 in the line, or drilled under it, but there's only like
24 75 feet east-west by a couple hundred more south, so
25 they could have bored under it, which still would have
0053

1 been an impact.

2 MR. BRITT: Sure.

3 MR. CHAD SMITH: But a lot of the
4 information has not been gathered yet.

5 MR. BRITT: You're bringing up a good
6 point.

7 It's about planning. This whole 106
8 process is intended to be a proactive planning tool so
9 that you can minimize, you can identify and then
10 minimize or mitigate impacts, and that's a wonderful
11 point, and again, that's what Ft. Irwin is trying to
12 do.

13 And again this is -- this is -- it's not a
14 required, it's not a 106 or 110 required. It's Ft.
15 Irwin wanted to learn more about where to start with
16 consultation, and this is what we call our baseline
17 study.

18 It's not meant to be inclusive, it's meant
19 to be a starting point. It's meant to elicit comments,
20 and we'd love to work with each of the tribes to learn
21 more about and share information. It's a -- You know --
22 it's a two-way street here.

23 MR. CHAD SMITH: Would there be
24 consideration of a more land expansion specific
25 ethnographic study involving -- I hate to say
0054

1 "Hands-on," but active participation, like there is
2 at Nellis, with some of these -- with all of these
3 tribes?

4 MR. BRITT: Certainly, I don't see any
5 reason why that couldn't be considered

6 MR. BARI: See, what the Army's policies
7 are and we would have to call -- also our main goal is,
8 as Col. Flinn says, that training the troops is our
9 mission and to meet that requirement we go through all
10 of these requirements and all that are required and the
11 laws, and also if there are minimum, we try to go above
12 and beyond minimum requirements and we will keep on
13 doing that, but we will -- if we are going by some

14 resolution of the laws which we cannot I think violate
15 then we will certainly consult with you guys, and all
16 the tribes and everybody, but to make a certain decision
17 that we need to involve activity, and personnels in that
18 -- in the investigations in these things, we certainly
19 will consult with all of them, we will go from there.

20 MR. BRITT: Go ahead.

21 MR. DONALD SMITH: The problem is that
22 putting the input in here, you know you guys took us off
23 those areas in 1860, you know, put us down in Ft.
24 Mojave, down in Sherman. I mean we don't -- then down
25 to Parker.

0055

1 MR. BRITT: I understand that's the
2 history, yes, sir. I wasn't here.

3 MR. DONALD SMITH: That's over 120 years
4 ago.

5 MR. BRITT: Sure.

6 MR. DONALD SMITH: Let's see, 140 years

7 MR. BRITT: Yes.

8 MR. DONALD SMITH: You know, we start
9 going down to some reservation or something and then
10 expect us to know our home? Oh, man, leave me your home
11 and come back, it's going to be all torn down
12 MR. BRITT: Sure. I couldn't go back to
13 England and tell you where I'm from. I know exactly
14 MR. TITO SMITH: But you have the right
15 to go back. We've been moved from areas where we don't
16 have the right to go back. We can't go back to Yucca
17 Mountain area any more, we could go back to Ft. Irwin
18 any more, we can't go back to 29 Palms, the marine base
19 any more.

20 MR. BRITT: Sure.

21 MR. TITO SMITH: The division of our
22 people, now, we don't have part of our people here, the
23 Pahrump Paiute, because we're all one people. I was
24 doing a survey once because we've been divided for so
25 long that we are all related.

0056

1 MR. BRITT: Sure.

2 MR. TITO SMITH: We're all one chief. I
3 attended a meeting at 29 Palms, which Nu Wave, they
4 wouldn't speak to me. They were the same people.
5 I finally said "Who was your guys's last
6 chief?"

7 The last chief, and they said "Chief
8 Tacoma."

9 I said, "No, he couldn't have been, he was
10 our chief," but that opened the dialogue, but we are one
11 people.

12 Try to go to Las Vegas, I ask the same,

13 "Who was your last Chief?"

14 They say "Chief Dakota." Went to Pahrump.
15 So we're all related. Now we've been divided.

16 Our tribe in particular is Lake Havasu.

17 At Lake Havasu we were moved from the desert and at the
18 turn of the century our people were still there in 1907,
19 were living -- in 1907 they set a reservation outside of
20 Lake Havasu, the Chemehevi. You can't live in the
21 Barstow, you can't live in the whole desert area, you

22 have to move out, so this is what happened.

23 We come to Lake Havasu a lot of our people
24 settled in there, some of them didn't, and just a few
25 short lightyears later they decide in Los Angeles and
0057

1 Phoenix they needed our water, and they condemned our
2 reservation.

3 So our people went out, they went to the
4 cities, and they assimilated like the government wants
5 us to.

6 They send our parents to school to get
7 educated, but ours was a forced a assimilation, by
8 condemning our reservation, what you have now are a lot
9 of our people who grew up in the cities are coming back
10 to the reservation, and they don't know their culture.
11 They don't know their religion, our people's religion.
12 They accept christianity, but they don't know our
13 people's religion. They don't know how to speak the
14 language.

15 So we're trying to bring that back, and
16 some of these areas like Ft. Irwin, we know what the
17 story is about, we've never been there, but so anything
18 getting taken away, we need to have it recorded, but
19 take it away, the model says there might not be
20 something over here, so we're not going to do a survey
21 over here, we want -- We at Chemeheuvi, we want a full
22 survey of the whole area that's going to be turned over
23 to the fort, you know.

24 I know we have a standing Army. I was
25 drafted in the Army, I didn't volunteer, I went to
0058

1 Vietnam.

2 I did my thing, I know we need a standing
3 Army.

4 We've had someone trying to take what
5 we've they've taken, what we have, this country is a
6 great country.

7 We could feed the whole world, the United
8 States, and there's other people that want this, I know
9 that we have to protect what we have, there's always
10 going to be somebody trying to take what you have, but
11 before you do all of this, we're probably going to want
12 some more site visits.

13 We do have cultural resource people
14 because we can't afford to pay people -- it was hard for
15 me to be here today. I couldn't be here yesterday.

16 MR. BRITT: One of the things we
17 discussed yesterday was organizing a visit to Ft. Irwin
18 to visit some of the sacred sites, some of the
19 petroglyphs and we'll get that organized and make
20 sure that you're --

21 MR. TITO SMITH: we're losing by force,
22 we're losing. Some of us understand, we grew up and we
23 were told our parents and grandparents drove it home,
24 but the other ones that got forced out, they have no
25 idea who they are.

0059

1 They know they're Chemeheuvi by blood.
2 Now they want to come home. We're bringing them home
3 and while we're educating we're losing valuable

4 resources.

5 MR. BRITT: And we do.

6 MR. RAY: I'd like to comment.

7 MR. BRITT: Sure.

8 MR. RAY: He's saying that we kind of
9 lost, a year ago I met a Chu Wa'ave from the San
10 Bernardino area Bloomington. He doesn't know his roots,
11 all he remembers is that his grandmother went to Sherman
12 Institute.

13 He doesn't know he's Chu Wa'ave but he
14 found a record he comes out and talked to me now and
15 then actually trying to find out now he's related to us;
16 probably, yeah.

17 A lot of this is trying to say is that
18 they are lost, and not too long ago, I know Ft. Mojave
19 knows this too, there was a woman Chu Wa'ave, Paiute
20 whatever you want to call her, we don't really know.
21 There was no type of record of her. She couldn't get
22 medical benefits from the Indian Health Services, no
23 place, no kind of benefits because there's just no
24 records.

25 Ft. Mojave tried to help her, tried to
0060

1 find out who is she, where is she from, Chu Wa'ave
2 tribe, tried the same thing, Colorado River tried the
3 same thing. Who is she? Never did know.

4 One time I heard an elder lady, says "I
5 know her, but not by her marriage name," he was married
6 to a Navajo, so we were going by the Navajo name, we
7 didn't know.

8 So it took her to Las Vegas Paiutes and
9 from there they sent us to Moapa. This old man, you
10 probably remember who he is, but I forgot his name, and
11 asked him "Do you know this woman or do you recognize
12 this woman?"

13 "Oh, yeah, I was raised in the same family
14 in Barstow."

15 This is what he's trying to say. We lost
16 a lot of this. They lost who they are.

17 MR. BRITT: I understand.

18 MR. RAY: We're trying to find out, like
19 I say Ft. Irwin or anyplace else, things that are not
20 recorded, not on record

21 MR. BRITT: Sure.

22 MR. RAY: These are our family, brothers
23 right there.

24 We just heard -- Well, our father and his
25 brothers, his sisters never tell us about it, you know,
0061

1 they're mostly like their past with the grandfather --
2 who was their father -- our grandfather, never talked
3 about it.

4 It took us about twenty years -- twenty
5 years or longer to find out who he was.

6 Then we learned that we have a family
7 cemetery in the desert.

8 Very scary, the things you're doing is
9 digging around these areas trying to find things, this
10 is not recorded.

11 The only ones that knows I think is my

12 brother over here, myself, but we have other relatives
13 in that same family, big family, they don't even know,
14 they don't know anything about that part, but this is
15 what we're trying to grab back.

16 MR. BRITT: Sure.

17 MR. RAY: And extend ourselves to where
18 we were, where we came from.

19 We have a picture of our home, mud house,
20 old mud house, an area there, and I think this is some
21 of the things that we're trying to say, that we're not
22 -- we're not really from out here.

23 MR. BRITT: I understand.

24 MR. RAY: Where they put us.

25 MR. BRITT: The purpose of this meeting
0062

1 is to hear this, we want to hear what you have to say.

2 We also -- because of the way the laws have been written
3 over the past ten, twelve, fifteen years, we have the
4 NAGPRA, we have the American Indian Freedom of Religion
5 Act that obligates the government to allow you access
6 onto these properties.

7 I know that no one was allowed out there
8 for 50 years.

9 Now the law has been changed, it's trying
10 to correct some of the wrongs, and what we'd like to do
11 is organize a trip to visit some of these sites, talk
12 with your elders, learn more about your culture, share
13 the knowledge that we have.

14 And we realize that as archeologists we
15 cannot go out and identify traditional and cultural
16 properties.

17 That's how the predictive model is an
18 archeological predictive model, it's not a culture site
19 predictive model. That's why we need the tribal input
20 to help us identify and manage and protect these
21 areas.

22 MR. RAY: Sometimes we have the elders,
23 they can't travel, you have to go to them

24 MR. BRITT: Right, I understand that, I
25 understand that's a big -- a big problem.

0063

1 Because access, it's rugged terrain, it's
2 hard to get out there, probably at least an hour and a
3 half drive to get to the Whale in a Jeep.

4 MR. BARI: That's why we were talking
5 about, we have the Programmatic Agreement, it's a
6 win-win situation for both sides, we provide you
7 information, you provide us with information and we
8 compile that and then that makes our mission easy, and
9 that provides, too, the wealth of knowledge and
10 information about the sites.

11 MR. BRITT: So I can finish this slide,
12 but we do know while there may not be any recorded
13 village sites, we do know that there are indeed many,
14 many sacred and traditional properties on Ft. Irwin and
15 nearby, and we haven't begun to identify them all.

16 We do know that we have -- that the
17 Avawatz Mountains are extremely powerful. You have
18 basalt deposits, also have a big supernatural event
19 there, Cave Springs, Bitter Springs, the Mohave River

20 was extremely important to the Mohave people as a
21 travel corridor.

22 We also have numerous rock shelters and
23 petroglyphs, just to name a few.

24 We've got vision quest sites, a lot of
25 things that are -- that are places that to the trained
0064

1 archeologist because there's -- it looks like a natural
2 place, we cannot identify that, and again that's why we
3 want to solicit the Native American input to help us
4 identify and protect these places.

5 That's it.

6 We're certainly open for more comments.

7 MR. CHAVEZ: I have one comment.

8 MR. BRITT: Sure.

9 MR. CHAVEZ: It's been bothering me. In
10 fact, all of my life, why is it that some Native
11 American people or bands of major tribes are not
12 recognized by the US government but at the time when
13 they were trying to exterminate them, they recognized
14 all tribes, they had them all on the list, the hit list,
15 but now they don't recognize them?

16 MR. BRITT: That's a good question, I
17 can't answer that.

18 MR. GUNDRUM: A lot of the people --

19 MR. CHAVEZ: That kind of goes against
20 what they're saying today, they did recognize it.

21 MR. BRITT: That's true, but I'm not --

22 MR. DONALD SMITH: Recognized, but
23 they're not organized, you know, you've got to get
24 organized to make a plan.

25 This is a plan, you always have a Native
0065

1 American thing, administration plans, so if you're not
2 organized, recognized or anything it don't mean a thing.

3 MR. RAY: Seemed like the government up
4 here is like the Mexican government, that they don't
5 recognize Indians. But we recognize -- but what are
6 those Indians? What are they?

7 MR. CHAVEZ: So they're not in existence
8 or aliens, or what are they?

9 MR. RAY: They're still aliens.

10 MR. GUNDRUM: I think we'd all agree
11 there are a lot of Indian people out there that aren't
12 part of the federally-recognized tribes

13 MR. CHAVEZ: I just get tired of hearing
14 that. Why do they have to be recognized by the US
15 government?

16 MR. BRITT: Because the US government,
17 and, Bob, correct me, there are tribes that are
18 recognized by the government have special entitlements,
19 recognition in entitlements

20 MR. CHAVEZ: We're all the same people

21 MR. BRITT: I don't -- that's just the
22 way the legal definitions are. They've been in place
23 for some time.

24 And I want to -- You know -- my role here
25 is to facilitate.

0066

1 MR. CHAVEZ: Part of that is recognizing

2 certain tribes to negotiate with
 3 MR. BRITT: I don't have the authority to
 4 recognize that. I'm just a monitor.
 5 COL. FLINN: We don't have the power to
 6 change those definitions
 7 MR. DONALD SMITH: The brochures that,
 8 Charleston got attacked by a native -- see, what does it
 9 say here -- Native Americans. So you recognized
 10 everyone. We know who attacked Charleston
 11 MR. CHAD SMITH: Carlton
 12 MR. DONALD SMITH: Carlton, I mean. We
 13 know who that was, that was our bunch right here. I
 14 mean we got killed, but at least we got a treaty out of
 15 it
 16 MR. BRITT: Folks, why don't we take a
 17 break and we can resume these conversations.
 18 Actually, I think what we're going to do
 19 is we're going to have our guest, let's take a break and
 20 then we'll have our guests give us -- tell us about the
 21 Ft. Mojave peoples, and then we'll resume our meeting.
 22 Thank you all. We've got about fifteen, twenty
 23 minutes.
 24 (Recess.)
 25 MR. CHAD SMITH: As we start back up here
 0067
 1 Mr. Llewellyn Barrackman and semi-retired former vice
 2 chair of the Ft. Mojave tribe, and former chairman many
 3 years as well, and Mrs. Betty Barrackman are going to
 4 give us some information and show us a brief video that
 5 they've prepared about some of the history and culture
 6 of the Mojave people, and we extend them our warm
 7 welcome, and they'll take it from here.
 8 MR. BARRACKMAN: My name is Llewellyn
 9 Barrackman, a member of the Ft. Mojave Tribe. My wife
 10 Betty, a member of the Ft. Mojave tribe also.
 11 We're going to show you about nine hours
 12 of tape here.
 13 (Laughter.)
 14 MR. BARRACKMAN: No, five minutes, that's
 15 all. I don't know how you want to do this.
 16 This is -- we were asked by the Piquat
 17 Tribe in the late 1990's, and we went up to our culture
 18 -- Sacred Mountain there, Avi K'wame, or Spirit
 19 Mountain, or Newberry Mountain, they call it, it's in
 20 the State of Nevada, right up here, when you look up
 21 north on a clear day, well, you can see the highest
 22 point.
 23 This is our mountain and we say that we
 24 are told, many years, there are several stories, but
 25 what I get is that I was told that we were created from
 0068
 1 that area.
 2 So the Piquat Tribe said they wanted a
 3 tribe that was their creations, so we were picked as one
 4 of the five.
 5 There were five tribes in the United
 6 States that were selected, and there was two tribes from
 7 New York, one themselves, the Piquat, one from Oklahoma,
 8 I think the Kickapoo Tribe, and the Fort Mojave Tribe
 9 for the Southwest.

10 So this will show about two days of work
 11 cut down to five minutes. Okay. This tells a lot of
 12 story, it's very short.
 13 (Videotape played)
 14 BETTY BARRACKMAN: I had to sing that song
 15 nine times before they were satisfied.
 16 MR. BARRACKMAN: That's it.
 17 (Applause)
 18 MR. BARRACKMAN: That tells us about
 19 Mojave, our Mojave. M-o-j-a-v-e.
 20 Yes, we were taught, we were told that God
 21 gave us our language, from the area, told us how to
 22 live, what to use, in it's hot, where to go under the
 23 shade when it's hot, where to go, when it's cold put
 24 something over ourselves, and he asked names, some of
 25 the area on the east side of the river and the west side
 0069
 1 of the river.
 2 This is some of the map that I made here,
 3 a cultural map, we call it, I and Betty, we made this,
 4 and this has been in courts already because of this blue
 5 thing coming down, the water, today. Not oil, not gas,
 6 but water.
 7 I remember reading a letter that was
 8 written way back in 1862 by a person by the name of
 9 Colonel Hoffman who was stationed over here at Ft.
 10 Mojave Post, a garrison they had here years ago.
 11 In parts he said, "This land is worthless,
 12 bare land, nothing here to think about coming in this
 13 area," I guess but it's good for the hostile Indians,
 14 which is the Mojaves, whoever lived around here at that
 15 time.
 16 But today this thing is better than gold
 17 or oil. Water. We need water, always, and the reason
 18 why I had this put together, and I try to have our
 19 neighboring tribes along the river, that's four of our
 20 type besides us, there are five of us, including us, to
 21 put something together and take it all of the way down
 22 to the Mexican border, but no one has done it yet.
 23 But I did that because we needed that.
 24 Some day we're going to use it, which we did use it.
 25 In time immemorial days, I guess we
 0070
 1 numbered many, many thousands of us. It was so crowded
 2 in this area because in those days lands weren't up
 3 here, so when the river flooded the snow melt up above
 4 us and came down, it just engulfed land and trees,
 5 whatever, but it settled on the east side of the
 6 reservation, which is Arizona, it was all under water,
 7 so that didn't give us any kind of a vacant -- to settle
 8 in that area, I guess.
 9 For that reason, well, some of us had to
 10 move.
 11 When we moved out of here we went west, we
 12 went west. I don't know how many of us, but nobody
 13 knows.
 14 We settled -- when we got to what we call
 15 Barstow, California today, the Mojave River, that's
 16 where we settled.
 17 There were other people there, the Serrano

18 Mission, I guess they were good enough to say "You're
19 welcome," so we intermixed, later years, later years,
20 and a few years after we settled there I guess we wanted
21 to come back to visit our relatives over here, Mojave
22 Valley, so we did.

23 Instead of just getting a group of us
24 together and just walking, we started a song, a song
25 from the mountain called Elephant Mountain. Elephant
0071

1 Mountain I think is right next to Daggot, California,
2 between Barstow -- and they sang song, four songs on top
3 of that mountain coming this way.

4 That's what you hear from her, that's her
5 song. We call it the Monk 'a Maya Coyote song, we call
6 it today, Mojaves, and that's still going on. It was
7 gone for about thirty, forty years, and all at once she
8 learned it from her mother as a child.

9 Now, she's teaching that song, it's been
10 revived, so it's been sung again, that song, so we told
11 back and forth.

12 What they also told us, that from the
13 river center of the going west into the San Gabriel area
14 we own up to the San Jacinto Mountains, and going
15 eastward, we go to the Hasyampa River, which is the area
16 of Wickenburg, Arizona.

17 We say we own 60 million acres there, but
18 somehow they said, the federal government said "No, you
19 don't own that much, you own at least a million five
20 hundred acres," so we came back, and the claims, we
21 claimed a million and a half.

22 But to this day it's dwindled down to
23 45,000 acres in three states, California, Arizona and
24 Nevada.

25 We call ourselves Day One. Day One Tribe.
0072

1 When you pick up the book of Native
2 Americans, they say, "Well, all Native Americans crossed
3 the Bering Straits, from Hawaii, or Mongolia or other
4 areas and come into this area," but we, the Mojaves, Day
5 One, they were created right here, this great mountain,
6 that's the reason why we named all of this area here.

7 But I urge some of the tribes here, if you
8 know your area, put something together like this because
9 you're going to need it one day, this has to go to court
10 some day and it makes it much easier to do that, to have
11 a map of your own to show where you come from, because
12 we had to go against the State of California, there's
13 one area that we got in here, in -- it started around
14 1960's, and then we went to court in 1971 in Riverside,
15 a hearing, a federal hearing, and that's when I made
16 this on the California side only because we weren't
17 ready for this yet, but from the California side.

18 California came in with a map, a Mexico
19 map, and they said "Well, this is the oldest map in this
20 room, nothing older." Ours is older.

21 So I had this in my hand about two or
22 three days later, well, our turn came up. So we put
23 this map up and said, "This is the oldest map now."

24 And we won our case. We won our case on
25 that, just using this map.

0073

1 But you know, I'm 85 years old. My
2 birthday is July the 4th, July Explosive person, I
3 guess.

4 (Laughter)

5 MR. BARRACKMAN: But when I came in this
6 area from getting off the military, came back to the
7 reservation in 1958, we hardly had anything, the tribe
8 didn't have nothing at all.

9 It was more like begging and begging and
10 begging, all the time, and at that time -- Well, before
11 that it was a novice to be taken over to Colorado in the
12 reservation, CRIT reservation, and whatever we tried to
13 do here, to develop, the federal government says "No,
14 no, no. Cut this down," until one day there was five --
15 we had three areas on -- to police, one was this area,
16 and this is the Bureau -- it's not federal, it's the
17 Bureau of Indian Affairs that I'm talking about.

18 They didn't tell us how -- what steps to
19 follow to get this thing going and all that, we had
20 people from Palm Springs that wanted to lease the land,
21 we had some from Chicago, we had some from different
22 areas, I think about four or five prospective lessees,
23 and they had good leases and all that, we thought, and
24 then we selected one.

25 We took that to Washington D.C. There had
0074

1 to be -- the only thing that we didn't have was
2 long-term build with it, only had twenty-five year
3 leases at that time. It was an agricultural lease. And
4 then we found out that we had to have 99, or more than
5 twenty-five years, so if you're going to put a lot of
6 money into a land, well, you're going to have to get
7 years of time so that you can get your money back, which
8 we didn't know because nobody had told us. We didn't
9 have enough money to buy -- I mean get a -- hire an
10 attorney for it or anything.

11 But anyway, the congressman from
12 California by the name of Harry Shepard was the insular
13 chairman of Indian Affairs.

14 He said, "I'll put that together for you,
15 and it's going to be approved."

16 So the next day, I guess, when they went
17 -- we all didn't go, I was in the council then, I just
18 started, then, but there was a chairperson by the name
19 of Francis Dillman and Mr. Clark Lewis, they are not
20 with us any more, but these two were sent ahead, and one
21 had a pass, the chairperson, she can go from Needles to
22 Chicago only, that's it.

23 From there on, well, she's going to have
24 to thumb her way or what.

25 Mr. Lewis didn't have nothing so the City
0075

1 of Needles pooled their money together and gave him some
2 money to be there and return, and Francis Dillman also
3 was given money from Chicago to Washington and back to
4 Chicago, and then use her pass back again.

5 And this highway got going, and when that
6 was approved, the 99 year lease approved, it was a house
7 resolution 2635 that was approved. That's our own,

8 nobody else's, no other tribe but our own. That's what
 9 happened.
 10 After that, well, I guess we passed the
 11 BIA, I guess, and they left us alone after that.
 12 So ever since then, well, you see this
 13 here, I named this place here, Avi, they were looking
 14 for a name so I named it Avi, and I wanted to name it
 15 The Macav Casino, and they said "Oh, that's too hard to
 16 pronounce, too long to spell," and I said "How about
 17 Avi?"
 18 "How do you spell that?"
 19 "A V I."
 20 They said, "Okay, we'll name that Avi," it
 21 means money in your pocket.
 22 You can use twice Avi. When you are hear
 23 and you are talking about Avi, you're talking about
 24 money in your pocket. If you're going to around that
 25 mountain, that's another Avi, so that's two ways to use
 0076
 1 Avi in.
 2 I think that's a Jewish -- I think use --
 3 their name is Avi. A-v-i. I met somebody over in Las
 4 Vegas one time that had a cap with Avi, and I said, "Oh,
 5 that's my name."
 6 But I think we have come a long ways
 7 since the dams were put in and all that.
 8 And we're going to continue on, and -- but
 9 we like to be notified whenever there's a site, whatever
 10 it is, like this area here, now, we've had one right
 11 here, a little man running around.
 12 I've heard that story ever since I was
 13 able to understand the Mojave.
 14 Oowat Ooku, Oowat Ooku, and it shows a
 15 path, a ring that people have been running around on,
 16 Oowats means breath. Ooku, it means breath, you can say
 17 holding it, holding it long enough, you run around this
 18 ring, and at that time they tell me that the river was
 19 up against the west part of the area here where this
 20 little ring is, so when a youngster goes around there,
 21 it's a contest going around, how long you can hold your
 22 breath, and many of that been doing that, just wore a
 23 ring, all of this many, many thousands of years, I
 24 guess, and they just finally found that not too long
 25 ago, about -- I would say a year or more -- so this is
 0077
 1 why we put this in here, the Needles Bullhead Highway or
 2 Laughlin Highway, it has cut this out already, this east
 3 part of the ring, so they had expected to widen it this
 4 way to the left, going north, to the right this way. We
 5 have a lot of petroglyphs in this area here, and
 6 intaglios and all that, so I don't know how they're
 7 going to move the road unless they go around, the old
 8 bed of the river years ago.
 9 And they can go no further this way
 10 because there's a lot of other stuff in this area
 11 towards that mountain, all of this is full of culture
 12 stuff. That's the reason why it's named.
 13 I think I've said enough.
 14 (Laughter)
 15 MR. BARRACKMAN: Any questions? Anybody.

16 Okay, well, nice to have you all here.
 17 (Applause)
 18 MR. BRITT: I would like to add,
 19 Mrs. Barrackman made a lot of the displays, and
 20 contributed the displays and the Native American photos
 21 here. I encourage you to ask them while they're here,
 22 if you have any questions about any of the items or
 23 pictures.
 24 I think what we'll do is we're -- it's 11
 25 twenty-five, we'll just -- we're supposed to break at
 0078
 1 11:30 for lunch. Have we heard from -- lunch is in
 2 here.
 3 MR. BARRACKMAN: By the way, I didn't know
 4 there was going to be so many of you here, I didn't
 5 bring enough maps. I only brought about ten, but if you
 6 need a copy, or want one, leave your address and we'll
 7 send one.
 8 MR. BRITT: Thank you both again. We
 9 really do appreciate it. There's a lot of insight into
 10 the cause.
 11 We've got thirty more minutes, so if it's
 12 okay with everybody I will continue.
 13 And we'll talk about a couple of the
 14 projects that we've got either going on, concluding or
 15 about to begin. Give me just a minute here to get this
 16 out of the way.
 17 At this time I'd like to reintroduce
 18 Mr. Mickey Quillman, Natural and Environmental Culture
 19 Manager.
 20 He's going to give a little background on
 21 the fiberoptic network and the rail spur and I'll talk
 22 more about the archeology and cultural resources, when
 23 he's done.
 24 MR. QUILLMAN: Hi. I appreciate your
 25 attention, and I appreciate your presence here today.
 0079
 1 As you know, Ft. Irwin is a very, very
 2 busy place. There's a lot of things happening out
 3 there.
 4 Col. Flinn alluded to the Fiberoptics line
 5 earlier this morning, about some of the things that are
 6 going to happen in the future with equipment.
 7 All of our tanks, for instance, and
 8 Humvees are going to have computers in them so we can
 9 figure out where they're at.
 10 In order for us to provide communications
 11 back to the control center, back to the main combat
 12 information center, more or less -- that's a Navy term
 13 there's a different term for that in the Army -- but
 14 back to the Star Wars, whatever you want to call that,
 15 all of that information from every vehicle is going to
 16 be sent back via fiberoptics.
 17 So this little machine, every -- every
 18 vehicle, every tank is going to have its computer
 19 equipment in it. It's going to send a radio signal
 20 halfway up the mountains, it's going to hit a
 21 Fiberoptics node and be sent back to the Star Wars
 22 building.
 23 What we do now is we have antennas all

24 over the installation and it's gone back by radio, but
25 there are some problems with frequency. People have a
0080

1 lot of cell phones which takes up frequency. I've got
2 two of these in my pocket, so there's a lot of
3 communications with a lot of competition for the band
4 width, so in order for us to communicate and train the
5 Army the way we need to train, we need to put in this
6 Fiberoptics network. Okay, this is to
7 provide information to the ops group so they can know
8 what's the happening out there on the land to meet the
9 requirements, more technology, and how do we -- how can
10 we train smarter.

11 What we've done is we've just completed
12 the cultural resources survey for the first two loops of
13 this fiberoptic network, and I guess you have some basic
14 information as to what's there.

15 MR. BRITT: Yes.

16 MR. QUILLMAN: We've adjusted the path as
17 we need to adjust it and we're going to install all of
18 these fiberoptics. What it is, its going to be buried
19 four feet deep along the major tank trails and so we're
20 surveying so we don't impact any.

21 This is basically the network itself, it's
22 going to start here at the containment area out this way
23 back up like this, and then back up around here so we
24 can have communications throughout the installation.

25 It will be done in two phases. The first
0081

1 phase, we completed our surveys, we anticipate
2 construction, barring any unforeseen findings out there,
3 we anticipate starting this construction in the spring
4 of '04, and probably about six months to complete the
5 project.

6 MS. HERNANDEZ: I have a question. When
7 you're doing a fiberoptic line, we just approved Las
8 Vegas from Nellis --

9 MR. BRITT: Can you talk louder?

10 MS. HERNANDEZ: I said when you're doing
11 this project in Las Vegas we just approved one from
12 Nellis.

13 Of course, there is the fiberoptic lines
14 but they were going on existing transmission lines that
15 were there. Are you putting up new ones, or are they
16 already there in existence?

17 COL. FLINN: There are no transmission
18 lines out there. It's a pretty pristine environment, so
19 this is all new work

20 MR. QUILLMAN: The intent is to follow
21 the major military supply routes that they use on a
22 regular basis out there, so we disturb as little land as
23 possible. We'll be in very close proximity of that.

24 We've gone out and conducted our
25 preliminary archeological surveys, so we know basically
0082

1 what's out there, so it's all brand new work.

2 MS. HERNANDEZ: Okay.

3 MR. QUILLMAN: This is -- we're going to
4 do -- there's two phases that we're going to do, the
5 first phase starts here, goes like this and up into

6 here, and then a second phasing will expand out to that
7 way and further out into the expansion areas to the
8 west.

9 Those -- those are further down the road,
10 we're only going to do the first phase, first two loops,
11 and that will be next year, and then probably two or
12 three years from now; depending upon available funds
13 we'll go ahead and do the rest. Okay. Tad?

14 MR. BRITT: Yes. These are some of the
15 sites that we found along the route, these little
16 numbers, dots here.

17 As you can see, this doesn't match exactly
18 along the road, but it is -- it's proposed and the
19 alignment itself is actually ten to fifteen meters off
20 the existing road, following existing trails.

21 We've got these sites and we basically
22 have two clusters, lithic reduction stations, chipping
23 stations. Here's another cluster we see, what's this
24 lake here, Darrell?

25 MR. GUNDRUM: That would be Nelson lake
0083

1 MR. BRITT: Nelson Lake, yes. And again,
2 you can see them clustered along there.

3 The work was supposed to have been
4 concluded yesterday.

5 Prior to the day before yesterday they had
6 already done the inventory and they knew how many sites
7 they found. They found 37 cultural sites. Of those
8 three were historic or military, the remaining were
9 lithic reduction sites, consisting mainly of chip stone
10 or what archeologists refer to as debitage. The only
11 types of tools that were identified were three hammer
12 stones, three cores and one bi-face.

13 It's important to note all of these sites
14 were found on desert pavements, had no deposit -- they
15 were systemically shovel tested.

16 Again, we used the same routine of doing
17 reconnaissance with the geomorphologists and
18 archeologists following back up with the archeological
19 inventory, and then when they came back, then they
20 evaluated the sites by doing systematic shovel testing,
21 and none of these sites appeared to have any
22 characteristics that would qualify them to be
23 significant under criteria for national register of
24 historic places.

25 That's the status as of day before
0084

1 yesterday, and as far as I know it probably will not
2 change.

3 So our basic report will be coming out, I
4 know your tribes have already been notified by letter
5 that the work will be being done. A report will be
6 issued in about three months; we'll get that out to your
7 tribes for comments and finalize the report again, this
8 is part of the planning process, and as Mickey said,
9 they hope to begin construction next year.

10 MR. QUILLMAN: Somewhere in the late
11 spring

12 MR. BRITT: Okay.

13 Yes, sir. Mr. Smith?

14 MR. CHAD SMITH: Go ahead
 15 MR. BRITT: I'll give you --
 16 MR. CHAD SMITH: He's higher up than me.
 17 You're going to have archeologists
 18 monitoring the ground disturbance within sight
 19 boundaries.
 20 MR. BRITT: No, sir, these sites are
 21 recommended.
 22 If they are indeed -- once the process is
 23 complete and sites have been evaluated and they're
 24 determined insignificant, then no, there will not be any
 25 monitoring.
 0085
 1 That doesn't mean that there won't be an
 2 inadvertent discovery and we'll react appropriately, but
 3 the practice at Ft. Irwin is not to do monitoring on
 4 sites that are not eligible or considered eligible for
 5 listing on the national registry.
 6 MR. CHAD SMITH: We might differ with
 7 that, and also depending on the good faith of the
 8 construction crew to -- not only to report a discovery,
 9 but the visual skills of the operator
 10 MR. BRITT: Sure
 11 MR. CHAD SMITH: To know that they're
 12 going through something that's subsurface, then we
 13 probably definitely will recommend monitoring
 14 MR. BRITT: We appreciate your comments
 15 MR. CHAD SMITH: And Native American
 16 monitoring as per SEQA.
 17 MR. BRITT: The SEQA -- is that --
 18 MR. BARI: SEQA does not apply. NEPA
 19 applies.
 20 MR. BRITT: We appreciate your comments
 21 and we'll certainly take them under consideration.
 22 The nature of this undertaking, and
 23 correct me if I'm wrong, but as it was explained to me
 24 there's a machine that digs a trench about half a foot
 25 wide, lays the pipe, covers it up and just moves along;
 0086
 1 is that correct?
 2 MR. GUNDRUM: You'd have to ask Mickey
 3 MR. QUILLMAN: It depends
 4 MR. BRITT: Monitoring would not be a
 5 very good approach to doing that.
 6 What we've done to ensure that there are
 7 no sites at these locations is the geomorphology, the
 8 visual inspections, the subsurface inspections, we feel
 9 like we've made a very, you know -- above and beyond the
 10 call of duty to identify what's out there.
 11 And I believe it's documented in your
 12 reports, the exact methods, of course.
 13 MR. GUNDRUM: Let me make a quick
 14 correction.
 15 It's our general policy and it's outlined
 16 that for ground disturbing projects like this where
 17 there is an opportunity to monitor where the machine is
 18 not laying the cable directly then we do that
 19 internally, we have six archeologists on staff where we
 20 monitor those projects.
 21 MR. BRITT: I stand corrected, so will

22 you or will you not be monitoring this project?
 23 MR. GUNDRUM: I think it needs -- the
 24 project needs to see how the cable is going to be
 25 installed in different sections on the project.
 0087
 1 MR. QUILLMAN: Certain areas, where the
 2 potential sites we only have one archeologist out there,
 3 we have a biologist out there who have minimal
 4 background training in archaeology as well
 5 MR. BRITT: Okay.
 6 I guess I was responding to what the law
 7 requires. This demonstrates a good faith effort above
 8 and beyond the minimal requirements of the law, so that
 9 should be --
 10 MR. TITO SMITH: I agree with Chad for
 11 monitoring prehistoric military sites. What is that --
 12 what constitutes the historic portion of it?
 13 MR. BRITT: Historic is those types of
 14 sites that are related to mining and ranching that have
 15 metal, glass, iron, typically items that we would
 16 associate with the introduction of western culture,
 17 European culture.
 18 Most of these -- Well, I think one is a
 19 foundation, one is a foundation of a 1950's military
 20 house, I think cinder block; one is a fireplace, and the
 21 third is a .50 caliber cartridge, something like that.
 22 MR. BINTER: Versus something native
 23 Native American over a thousand years? How is that?
 24 MR. BRITT: I'm not understanding your
 25 question. Let's let him finish first, please
 0088
 1 MR. TITO SMITH: Then you have 3450
 2 reduction sites, and to us that maybe could be historic
 3 military because we might have been out there chipping
 4 tools for war
 5 MR. BRITT: Sure, sure. It's also
 6 labeling -- for archeological conventions for these
 7 sites, they're called lithic production stations
 8 MR. TITO SMITH: In the military is that
 9 eligible for the register?
 10 MR. BRITT: Presently, no, sir, it's not,
 11 but that's not a definitive answer.
 12 The process involves, if we make -- the
 13 contractor makes recommendations, we review the report,
 14 we send it out for comment to the Native American tribes
 15 as well as the California SHPO, we take those comments
 16 into consideration and a determination is made, if
 17 there's a conflict it gets elevated -- or we try to
 18 resolve it at the level -- whatever level, at the lowest
 19 level. If it's not resolved, then there's a process
 20 that elevates it to the keeper of the register and, they
 21 make a determination.
 22 MR. TITO SMITH: And then the other
 23 portion, you say it's watched over by you, have
 24 archeologists working on it, but they're working for the
 25 government, protecting the government's -- we have a
 0089
 1 concern is we want it monitored, to make sure they're
 2 monitored, right.
 3 For instance, you know, I know the

4 government don't like SHPO, I can go out and say what's
5 -- I just did this a while back -- we're going to do a
6 sewer project, right?

7 We had to do a cultural resource. We went
8 and looked at it, wrote it all down, what was all there
9 and SHPO wouldn't accept it because I'm not an
10 archaeologist.

11 So I had to call Chad. "Chad, would you
12 come and do it?"

13 Chad just wrote, found everything I found
14 except in terms that -- our terminology was different,
15 and --

16 MR. BRITT: And that's a good point. We
17 don't make the rules; we just follow the rules

18 MR. TITO SMITH: We feel like a monitor
19 because some of us know what we're looking for.

20 And we -- I'm -- I'll just say it we doubt
21 what some of the archeologists do or how they do it or
22 are they going to get correct information, you know, and
23 we want to protect what we have.

24 Like I say, I couldn't ever write a report
25 out, right, because I use it for my writing for

0090
1 convenience.

2 Chad come out there and did a report and
3 identified the same thing. I didn't show him, and so
4 that's the reason why we want monitors. We want our own
5 monitors, some other people might give us -- someone
6 else didn't find everything that was there.

7 MR. CHAD SMITH: We probably would
8 request a field visit to look at the sites, and in the
9 report itself if they are at all extensive and I know
10 some of them are not, even the size of this area right
11 here --

12 MR. BRITT: There's one area out there
13 that's over a kilometer long

14 MR. CHAD SMITH: That's where we would
15 differ on eligibility under criterion D, for information
16 potential, and differ with Doctor Warren's assessments
17 that are built into the integrated cultural resource
18 management plan, and all this is based on ineligibility,
19 and then also as a suite of sites as a group, there may
20 be overall eligibility of four or five sites that aren't
21 individually eligible, kind of like the mining district
22 aspect of things, and even some of these 1948 C ration
23 and .50 caliber brass and military locations too, and
24 when we have the differences on eligibility, and then
25 looking at it statistically, if 37 sites were found in

0091
1 the survey, how are none, even if the 34 are eligible,
2 that it is possible that with -- not a large
3 ethnographic study, like for a land expansion, but a
4 component of the study that is ethnographic in nature
5 that we may have other concerns that those sites are
6 related to or part of, and that the preparation of the
7 ethnographic study and the monitoring by representatives
8 involved concerned tribes would adequately reduce
9 adverse effect to an acceptable level from our
10 perspective.

11 So that's some of what we would be looking

12 at.

13 And, of course, it all depends, we may get
14 the report and say "Yeah, they're right."

15 MR. BRITT: Sure.

16 But I think both of you gentlemen brought
17 a very good point to the table, is that significance is
18 not a static concept. It's a dynamic concept that
19 changes through time.

20 I agree with you completely, McLewell
21 Warren looked at maybe -- looked at these sites or
22 whoever, twenty years ago, they didn't have the
23 technology that we have today, there are different types
24 of analysis; we can extract a lot more information and
25 use that information for a lot different purposes than

0092
1 we could twenty years ago.

2 And that's something that we look at every
3 time we do a survey, is we're trying to implement
4 state-of-the-art techniques for extracting information
5 and using that information to interpret the sites.

6 MR. CHAD SMITH: Another concern that I
7 have is that once the site is determined not to be
8 eligible for the register, any subsequent ground
9 disturbing activity undertaking that comes along can
10 doze right through it.

11 MR. BRITT: That's the law

12 MR. CHAD SMITH: Well, yes, but some of
13 those sites, there's a different sensitivity to, the
14 preservation of those places and further impacts on
15 those places on the part of tribes.

16 And basically they get written off, and
17 it's of great concern to us in the land expansion
18 project because it's not necessary that these sites be
19 written off, that the mission can take place with the
20 sites being preserved, and everyone comes out getting
21 part of what they need to do.

22 MR. BRITT: That's the intent

23 MR. CHAD SMITH: Because the overall
24 cumulative --

25 MR. BRITT: Sure

0093

1 MR. CHAD SMITH: -- effect on these
2 sites would be determination of these sites, which is a
3 dirty word

4 MR. BRITT: Neglect is an adverse effect,
5 we all know that. Just because you have a site and
6 you're not actively manning that site, neglecting it
7 that's an adverse effect, and that has to be mitigated,
8 we understand that

9 MR. CHAVEZ: I have an addition to that.
10 I agree fully with these gentlemen over here. The
11 situation I have is the subcontractors doing the
12 project, and they are -- they're under contract, right?

13 MR. BRITT: Yes, sir

14 MR. CHAVEZ: There's a lot of time to
15 finish this, right? Of course every contract --

16 MR. QUILLMAN: Sure, you have a start and
17 end date

18 MR. BRITT: A lot of time, I'm sorry,
19 allotted

20 MR. CHAVEZ: You tell me contractor that
21 is going to hold up the progress of their day-to-day job
22 to finish that, to meet that contract by discovering
23 inadvertently some human remains are culturally
24 sensitive material.

25 Who is going to report that? Believe me,
0094

1 I've known this from the past by roads being built, by
2 power lines being put in, that they've picked the stuff
3 up and taken it home.

4 MR. BRITT: Darrell can address this

5 MR. GUNDRUM: That's why we're there

6 MR. CHAVEZ: You just said up there not
7 necessarily you would be there all the time.

8 MR. GUNDRUM: Depending on the --

9 MR. CHAVEZ: Depending, see?

10 MR. GUNDRUM: Depending on the
11 methodology used, it doesn't matter if you have a
12 monitor that's Native American or if it's me, if you
13 cannot see the trench being dug

14 MR. CHAVEZ: That's my point, but you can
15 see what comes out of it.

16 MR. CHAD SMITH: I am kind of begging to
17 differ because on the fiberoptic installation and the
18 utility corridor next to the gas pine lines there was
19 monitoring, albeit national register eligible sites and
20 there were discoveries. You do only see the back dirt,
21 the foot that they drag behind the cat disrupts the
22 berm, which is small

23 MR. CHAVEZ: Right

24 MR. CHAD SMITH: But there's two factors
25 involved in this

0095

1 MR. CHAVEZ: Right

2 MR. CHAD SMITH: There's the visual
3 inspection by the monitor to see if ashy soil or
4 artifacts are showing up.

5 There's also the fact that negative
6 information is still information, and if you monitor and
7 nothing turns up, you're still there monitoring, and
8 kind of a third aspect is again, it adequately addresses
9 concerns of the tribes to an acceptable level in this
10 thing, and a group of sites would have impacts to them
11 to the effect that there's an overall impact, an overall
12 adverse effect that isn't being addressed, and at the
13 very least that should be considered to be an indirect
14 effect, a program implemented to address that both
15 ethnographic and monitoring.

16 And, you know, it's pretty standard off
17 installation, and it's really standard on Nellis and
18 it's standard on China Lake.

19 And then at the survey side of it, both of
20 the other installations in the general area, not 29
21 Palms yet, but hopefully soon, have implemented Native
22 Americans accompanying the archeologists on the surveys,
23 most often as crew members that participate as a crew
24 member in the survey, but off the installations the
25 Native American monitoring, we're there as much to

0096
1 monitor the actions and activities of the archaeologists

2 and how they do their job, because we are the
3 construction related ground disturbing activities.

4 And I'm not saying that any of the
5 archeological consultants that have worked on Ft. Irwin
6 have a client satisfaction orientation where they are
7 being paid to do the work, and it does get into the
8 realm of archeological ethics as to whether you could
9 call a site not eligible, where you could say it is
10 potentially eligible as we're going to say definitely on
11 these 34, requires further testing to determine the
12 extent of the site outside of the direct right-of-way
13 for the fiberoptic.

14 MR. BRITT: We've already done that, any
15 sites within the right-of-way they're directed to
16 systemically determine the vertical and horizontal
17 limits and the nature and the degree, and the type of
18 site it is.

19 We don't stop with the right-of-way,
20 because it's a management issue, I mean they need to
21 know this anyway.

22 MR. CHAD SMITH: We've definitely seen
23 that orientation among some archeological consultants,
24 on projects to where they go on the side of who signs
25 the paycheck on these things
0097

1 MR. BRITT: At Ft. Irwin any work that's
2 done on the base, they are assigned a monitor.

3 Darrell and his group just spent three
4 weeks solid working with these crews every single day,
5 so there is some oversight at the local level.

6 Yes, ma'am?

7 MS. EDNA SMITH: Edna Smith, I'm not an
8 Indian tribe from this area, but I'm married into a
9 family.

10 But when I was younger the Army Engineers
11 did come in and relocate my family on the Sioux Indian
12 Reservation, and when we were in the process of doing
13 all of the building and so forth my dad, they asked --
14 the Army engineers asked my father if there was
15 something that he wanted done, they could do something.

16 So my dad said, "Well, my daughter, that's
17 my daughter, has 160 acres of land up on top with no
18 water," he said, "I want you to build a dam for her," so
19 they built the dam for me.

20 So with the Mojave and the Chemehuevi's, I
21 don't know if they have a museum at Ft. Mojave, but
22 you're finding all of these artifacts, and I don't know
23 if they have a museum or not. Would you be in a
24 position to build Ft. Mojave a museum and Chemehuevi
25 Tribe a museum?

0098

1 MR. BRITT: I don't believe we're
2 authorized to do that, on behalf of the Ft. Irwin.

3 MS. EDNA SMITH: Would you be able to help
4 them somehow?

5 MR. BARI: We do have a curation facility
6 at Ft. Irwin Preserve -- with the cover over here, and
7 they're open to visit, anybody can come and see those.

8 MS. EDNA SMITH: They need their own on
9 their lands, they have to show, view these things

10 MR. BRITT: I understand, but at this
 11 point in time we don't know how to identify a Mojave
 12 artifact or a Chemeheuvi artifact. That's why we need
 13 tribal input to do that.
 14 Can you understand that? We certainly
 15 wouldn't want to give artifacts away to a tribe that
 16 they didn't belong to.
 17 Many of the artifacts out there, to my
 18 knowledge, it would be extremely difficult to assign a
 19 cultural affiliation because a chipped stone or fragment
 20 of a mano or metate, that -- they're tools that all of
 21 the tribes would have used.
 22 I'm not saying it's impossible, but it
 23 would be hard to do. That's a good idea.
 24 MR. CHAD SMITH: Tribes can identify what
 25 came from their people by unconventional means
 0099
 1 MR. BRITT: Those would certainly be
 2 considered
 3 MR. CHAD SMITH: And that's where you go,
 4 kind of, to under NAGPRA, the oral tradition but at
 5 times medicine people of tribes have actually been able
 6 to not only identify which tribe it goes to, but what
 7 the concerns are of who made the objects or whose
 8 remains it is.
 9 And it's universally -- this stuff
 10 shouldn't be in here, it should be back where it came
 11 out of the ground, and then, of course, there is the
 12 possibility of collaborative studies and collaborative
 13 ventures in the future with Ft. Irwin by the various
 14 tribes.
 15 MR. BRITT: Sure
 16 MR. CHAD SMITH: And working together.
 17 Nellis, they've done the posters that have actually won
 18 at SAA's, at the Society of American Archeologists
 19 meetings, they fund tribal members to attend, and more
 20 to the point, they have implemented these ethnohistoric
 21 and ethnographic studies done by the Native Americans,
 22 but never reached the level of cost of the archeological
 23 survey projects that are ongoing either, but of course
 24 money -- I don't know what it's about --
 25 MR. BRITT: The big difference is Nellis
 0100
 1 and China Lake have totally different mission, and there
 2 are a lot of differences with the way -- I guess in a
 3 way you have to prioritize the way you manage your
 4 cultural resources.
 5 For Nellis it may be to their advantage to
 6 invest their money into ethnographic. Ft. Irwin is
 7 trying to get a basic handle at this point on what their
 8 inventory is.
 9 I'm not saying what's right or wrong, but
 10 the point I'm trying to make is that there are big
 11 differences in the way that these -- what's Navy, what's
 12 Air Force, they're all different.
 13 So it's kind of hard to compare those and
 14 say they're doing this and they're doing this, because
 15 the mission is different.
 16 I think Ft. Irwin has demonstrated that
 17 they're willing and trying to improve the way that they

18 do business.
 19 MR. CHAD SMITH: We're nudging 29 Palms
 20 in the direction of these more active management issues
 21 MR. BRITT: And I think they're -- I
 22 think they're great initiatives, don't get me wrong, I
 23 really do, I think the more interaction, the more
 24 sharing of information, the better the trust is, and it
 25 just builds a better relationship
 0101
 1 MR. KANE: I don't understand, if you
 2 want to build a better relationship, why Native
 3 Americans monitors can't be involved.
 4 Because I guess it comes down to the point
 5 of, you know, we don't trust the government.
 6 MR. BRITT: I appreciate that.
 7 MR. KANE: We don't trust you, if you
 8 keep on talking the way you're talking
 9 MR. BRITT: That's your prerogative, and
 10 I appreciate that, but I think there's some legal --
 11 Bob, I don't know if the government can pay for
 12 monitors? I'm not sure
 13 MR. BARI: Ft. Irwin is looking into
 14 whether we are required to do surveys and we are
 15 required to hire certified archeologists, and the
 16 companies who do things we are required to do the
 17 contracting, we will look into it and see if there are
 18 any options where we can bring or collaborative
 19 workforce to do the surveys and to monitor.
 20 I don't think I can just say, "Hey, I can
 21 bring my brother over here to do this," no, we have to
 22 do a competition, contracted, that's what we do, but we
 23 will look into the Army regulations, if we have some
 24 ways of making you partnership with a contractors to
 25 bring it on board to do the surveys and to monitor the
 0102
 1 sites, we will look into that.
 2 MR. CHAVEZ: I don't think there's any
 3 problem with that as far as amending budgets and
 4 amending contracts, it's done all the time, it's forced
 5 upon us as tribal people. Your governments are always
 6 forced to amend their budgets and contracts due to the
 7 fact to the shortcoming of the government, and I think
 8 there's no difference with you that you could amend by
 9 saying, "Hey, we need a consultant in this matter, build
 10 that into the budget."
 11 MR. BARI: There are certain regulations
 12 and there are certain --
 13 MR. CHAVEZ: You don't use consultants at
 14 all?
 15 MR. BARI: A lot of it is required
 16 MR. CHAVEZ: I just want my question
 17 answered, you don't use any consultancy?
 18 MR. BARI: We do use a consultancy, yes.
 19 MR. CHAVEZ: There you go.
 20 MR. BARI: But do we have a company which
 21 we can consider hiring or something, who can compete
 22 with other contractors, that's what we are looking for.
 23 MR. QUILLMAN: There is a possibility we
 24 have to look into the issue
 25 COL. FLINN: We will take the issue on

0103

1 and take a look at it. We are a highly regulated
2 organization, and laws and regulations are at work here,
3 and we have to just take a look at it.

4 MR. CHAVEZ: I understand.

5 COL. FLINN: To make that happen

6 MR. CHAVEZ: If somebody is a consultant
7 they're a consultant, right?

8 MR. QUILLMAN: Sure

9 COL. FLINN: Yes

10 MR. KANE: The other thing, when you're
11 going through this with a machine, whenever -- how deep
12 is the ditch going to be?

13 MR. QUILLMAN: Four feet in some
14 instances and in other instances it's going to be five
15 feet deep

16 MR. KANE: That ditch isn't always going
17 to be this wide, it's going to be spread out

18 MR. QUILLMAN: If we get into a sandy
19 area and we have to go five feet deep and it could be
20 ten feet wide.

21 MR. KANE: What might be fine if the bank
22 caves in

23 MR. CHAVEZ: There's a lot of things that
24 you've got to take into consideration, the underground
25 plants, maybe boulders underneath, unforeseen, you could
0104

1 open up a hole as big as this room

2 MR. QUILLMAN: Exactly, right

3 MR. BRITT: That's why we try to do an
4 extremely wide right-of-way, 45 meters for this project,
5 when the actual is going to be six inches

6 MR. CHAVEZ: You're talking right-of-way,
7 so you're talking more than half a foot

8 MR. BRITT: We want to take into
9 consideration if there's going to be tracked vehicles
10 going out there, we want to make sure if there's any
11 land disturbing activities related to this undertaking
12 of this fiberoptic network. We want to make sure
13 staging areas, access roads, all of the areas related to
14 this undertaking are properly inventoried and evaluated.

15 MR. CHAVEZ: You said 45 feet?

16 MR. BRITT: 45 meters

17 MR. CHAVEZ: Meters, that's a pretty good
18 size, you're talking about any kind of vehicles going up
19 and down there, people walking through there, materials
20 being -- laying on the side, the roles and whatever,
21 whatever you're going to use going to be dug, moved,
22 lifted, there's going to be tons of ground disturbance
23 out there. You're not talking about a half foot

24 MR. BRITT: That's why we have a 45 meter
25 right-of-way

0105

1 MR. CHAVEZ: I know that. The way you
2 were putting it --

3 MR. BRITT: You were asking me how they
4 were going to dig the ditch

5 MR. CHAVEZ: That's eluding the point

6 MR. BRITT: Basically they can dig that
7 ditch anywhere between this point, and 45 meters away,

8 they may need to move it.

9 We look at that entire area.

10 MR. KANE: There's disturbance within an
11 area you're talking about.

12 MR. QUILLMAN: Of course, but if you look
13 at the mission of Ft. Irwin, which is driving tanks on
14 the ground, there's pretty much disturbance wherever the
15 slope is less than twenty percent

16 MR. CHAVEZ: That was my point yesterday,
17 I believe be when I said to you how many times are you
18 going to go out and redo the survey, because there's
19 always going to be ground disturbance, and from what I
20 got, the feedback I received was "It's already done, we
21 don't need to do that unless somebody reports
22 something."

23 MR. QUILLMAN: We have surveyed. Darrell
24 told us about thirty percent of the installation has
25 been completely surveyed.

0106

1 We concentrated our surveys in areas where
2 they, where it's relatively flat, so we can -- a large
3 portion of what we have surveyed is in the actual
4 training areas.

5 When you go up above twenty degrees slope
6 into the hills and things, we haven't done much up there
7 because the Army doesn't spend much time. There's going
8 to be less ground disturbance up there.

9 MR. GUNDRUM: When there's a 106
10 undertaking like this, portions of the project sometimes
11 are previously surveyed, portions are not; we generally
12 resurvey them

13 MR. CHAVEZ: Then I guess I was unclear
14 with your answer yesterday, because, you did at one time
15 and then --

16 MR. GUNDRUM: I think I was
17 misunderstanding your question

18 MR. CHAVEZ: No, I heard it perfectly
19 clear. You said that if somebody inadvertently came
20 across an object, then it would be surveyed.

21 MR. GUNDRUM: We surveyed thirty percent
22 of the base, specific 106 undertaking, cable, building a
23 road or doing something like that, it's our general
24 policy to survey that area.

25 But if you have a survey that's been done

0107

1 twenty years ago just out in the middle of the training
2 area, then, there's no one undertaking the whole area on
3 that specific piece of ground.

4 MR. BRITT: I'll show an example of this
5 this afternoon that shows an area that has been
6 previously surveyed, and then how we're going to
7 actually resurvey that again, because the message twenty
8 years ago, the techniques are not up to standard on what
9 Ft. Irwin adheres to today, and I'll illustrate some
10 examples.

11 MR. CHAVEZ: That's my point, see, since
12 that time how many years has that been?

13 MR. BRITT: It depends

14 MR. CHAVEZ: It's been turned, turned,
15 turned

16 MR. BRITT: We have some that were
17 fiberoptics that were surveyed three months ago, some of
18 them twenty years ago

19 MR. CHAVEZ: Things that were on the
20 surface are probably underneath

21 MR. QUILLMAN: That happens, and things
22 underneath, depending on the weather, rain, whatever,
23 they could be coming to the surface

24 MR. CHAVEZ: Right

25 MR. BRITT: At this time let's take a
0108

1 break.

2 The food is ready. Let's eat. And then
3 we'll wrap up our last presentation, and then the whole
4 afternoon will be open for discussion. Thank you.

5 (The noon recess was taken.)

6 (Hearing resumed at 1:00 p.m.)

7 MR. BRITT: Before we talk about our last
8 project for the day, we'd like to make announcements.
9 One is we're passing around a signup sheet, and
10 basically it's a record of who has been here and their
11 affiliation.

12 That way we can go into the report and so
13 if you could take a minute and sign that, and if
14 somebody has left and their name is not on that, please
15 add that.

16 We've got Col. Flinn and we've got the
17 Barrackmans, did we get Felton to sign it?

18 MR. QUILLMAN: Yes, we did.

19 MR. BRITT: Which brings me to the next
20 event.

21 What we had originally planned was to
22 have the listening session go all afternoon today, but
23 several people have come up to me and said they're not
24 going to be able to be here tomorrow.

25 Is there a chance that we could cut our
0109

1 listening session short and go out and visit some of the
2 cultural sites this afternoon?

3 I mentioned this to Chad yesterday and he
4 said that would be possible.

5 I don't want to make a unilateral
6 decision. I want to see what the group feels about
7 that, if that's okay, if we leave about 3:00 o'clock,
8 we've got some more -- carpool and go out and visit some
9 sites. You all let me know how you feel. Do you want
10 to vote on it.

11 Raise your hand. Today? Opposed?

12 Do you want to go today? Okay, anybody
13 did not want to wait and go in the morning. One vote.
14 Okay.

15 When Chad gets back, which he'll probably
16 get back about the time that Mickey and I wrap up, I
17 don't want to rush you, so if we need to talk about
18 stuff, we've got until -- we've probably got about two
19 hours, unless we agree that we're done, and, of course,
20 we can always carry on conversations.

21 We're going to stop at 3:00 o'clock, there
22 may be things that spark some further dialogue.

23 So what I would like to do now is turn the

24 floor back over to Mr. Quillman. He's going to tell us
25 about the proposed rail spur from Yermo to Ft. Irwin,
0110

1 and I'll briefly talk about the planned cultural
2 resource activities, and then we'll open up the floor
3 for discussion.

4 Mickey?

5 MR. QUILLMAN: Thank you.

6 The next project that we want to talk

7 about this afternoon is in fact the rail spur, and let
8 me take a second and explain how this works.

9 We train tank units, battalions, actually,
10 from different parts of the country, so somebody from
11 Ft. Stewart or Ft. Bragg or Ft. Hood in Texas will load
12 up all of their tanks and related vehicles onto a
13 railcar.

14 And currently they rail them from their
15 home station, wherever that might be, to Yermo,
16 California, which is about thirty miles from Ft. Irwin.

17 They then -- and a typical unit will bring
18 about 400 boxcars or 400 train cars from home station to
19 Ft. Irwin.

20 We offload that equipment down there and
21 load it onto trucks.

22 The tracked vehicles are put on heavy
23 equipment transports and taken up 22 miles of dirt road
24 from Yermo up to Ft. Irwin, and the other, the other
25 equipment, the lighter stuff is actually carried up Ft.
0111

1 Irwin road, the same road that everybody -- that
2 everybody that works at Ft. Irwin drives every day.

3 That is a two-lane road with two foot wide
4 blacktop shoulders, so our intention is, it takes about
5 three days to offload a train of that magnitude and
6 truck it to Ft. Irwin.

7 And the short pole in the tent is in fact
8 the actual trucks from Yermo to Ft. Irwin.

9 So what we intend to do is build a rail
10 spur from Yermo near the managed trail and run it up
11 along the Alhorns into Ft. Irwin.

12 That would probably save about two days
13 per rotation, and maybe three, depending on how they
14 configure the rail spur, so what we need to do is go out
15 and do cultural resources surveys on the proposed rail
16 spur up to Ft. Irwin.

17 We have anticipated we will start that
18 rail spur survey sometime next year, spring, summer, I
19 don't anticipate construction to start for another three
20 to four years, it's a very expensive project and it's
21 going to take us a long time to get funding, but you
22 need to plan ahead and we'll go out and get the cultural
23 resources survey started this year and then we expect,
24 or we would like to have your input on what's out there,
25 how we can best deal with the cultural resources issues
0112

1 that I'm sure it's going to impact and go from there,
2 but the intended construction start date will be
3 sometime in -- probably -- gosh, '06, maybe even '07,
4 depending on funding, and with the unrest around the
5 world, it's very difficult to say what our budget is

6 going to look like.

7 So that's -- we have to plan ahead, we're
8 doing that, and I anticipate -- I don't know, three or
9 four years before we actually start the project.

10 So basically that's it, I don't know if we
11 need to show the rest of the slides.

12 MR. BRITT: I'll show them the alignment
13 and what's been done to day.

14 MR. QUILLMAN: The map will be
15 interesting to look at, but the rest of the verbiage is
16 on the slide

17 MR. BRITT: This is the proposed
18 alignment, there's a big -- it's a marine base, marine
19 depot there.

20 MR. QUILLMAN: Right.

21 MR. BRITT: This is -- you can actually
22 see it right here.

23 What they want to do is have a staging
24 there, an offloading area, come around and then there's
25 a big -- a little over a thousand acres staging area

0113
1 there, so what -- this is the area that we propose to
2 survey, beginning here and ending up here.

3 Some of this area has been surveyed
4 before, as we mentioned earlier.

5 I could read that, is it the areas in
6 green, Darrell, that have been surveyed?

7 MR. GUNDRUM: Looks like the areas in
8 blue -- Yes.

9 MR. BRITT: Green or blue, this little
10 loop here, this little loop, this area, and this area,
11 we propose to resurvey this entire stretch, that's what
12 our plans are

13 MR. QUILLMAN: Let me jump in here for a
14 second and look at the map.

15 Basically my training is as a biologist,
16 but I'm learning about all kinds of stuff here this past
17 couple of years.

18 They tell me that a rail -- an engine
19 pulling 400 cars can't exceed one and a half percent
20 slope, so as we come up past here we gain elevation to
21 get up over the saddle, but this loop here is needed to
22 maintain the same kind of elevation up there so we don't
23 have to have five or six engines pulling with what we
24 can do with two or three.

25 So basically that's why the configuration
0114

1 looks like that.

2 It's because of the elevation we need to
3 gain or the one and a half percent slope to go up with a
4 train.

5 COL. FLINN: I note, too, about two-thirds
6 of the line, proposed line, is off post, private
7 property.

8 I think some BLM in there, and then you
9 will see where it crosses into the post boundary.

10 MR. BRITT: Right here, this is the
11 southern edge now

12 MR. QUILLMAN: The way they currently
13 bring equipment from Ft. Irwin, Yermo MCA is down

14 here, they'll truck this along the frontage road of the
15 I-15, cross over or go under I-15 and come up the
16 managed trail, and this is a dirt road, and it is all
17 from this point here south, it's all desert tortoise
18 critical habitat, so we have to take all of those issues
19 in from a tortoise perspective and from an environmental
20 perspective by eliminating the dirt or dust from this
21 road, it's going to be an environmental win, the people
22 are out there watching, the watchdogs are basically in
23 favor of this particular concept, and so we would like
24 to have your input as well.

25 MR. BRITT: All told, it's a little over
0115

1 3,000 acres, the rights of way that we're going to
2 survey and inventory and evaluate for cultural resources
3 is thirty miles long and 400 feet wide.

4 And then additionally there's going to be
5 a little over a thousand acres up in the staging area.

6 This work is scheduled to begin in the
7 middle of this month. We'll inventory and evaluate, and
8 then, of course, all of the recommendations, the
9 findings will be disseminated with draft and ultimately
10 the consultation process and then ultimately the final
11 report.

12 MR. RAY: That critical habitat area,
13 desert tortoise, how are you protecting that?

14 MR. QUILLMAN: As we put the rail spur
15 together there's going to be a couple of features for
16 the project.

17 First of all, there's probably going to
18 have desert tortoise fence along both sides of the rail
19 spur.

20 There will be several areas where we're
21 going to put an actual desert tortoise crossings, but
22 there will also be some stream beds that we need to
23 ford, so build bridges or something like that, so we
24 don't -- so we can continue the gene flow continuity.
25 You're not going to fragment the habitat.

0116
1 So it's much better from an environmental
2 perspective, they have the trains running on the track
3 as opposed to having the Humvees running up and down the
4 road, because we can control the speed. We can control
5 the dust and provide protection to the tortoise.

6 MR. RAY: Don't they have a designated
7 area, critical habitat area where you can't even go in
8 there?

9 MR. QUILLMAN: We will have to deal with
10 that. This particular area, we're going to put the rail
11 spur, we will have to get a biological opinion from Fish
12 and Wildlife. We will probably have to buy some
13 mitigation lands.

14 There are some private lands, and we'll
15 have to buy mitigation lands to offset the thousand
16 acres, whatever they're going to take from tortoise
17 habitat, Fish and Wildlife could make us mitigation it
18 three to one, but we can't project that, we tell the
19 Fish and Wildlife what we want to do and they will tell
20 us the terms and conditions of getting that permit.

21 MR. RAY: Thank you

22 MR. GUNDRUM: The four hundred foot
23 rights of way corridor is 200 foot on either side of the
24 center line, so its 400 foot across, which is pretty
25 standard for a project of this scope.

0117

1 MR. BRITT: Questions? Comments?

2 Yes, sir?

3 MR. CHAVEZ: How many turtles are around
4 there, do you know?

5 MR. QUILLMAN: How many desert tortoise
6 are in that area?

7 MR. CHAVEZ: Per square or whatever.

8 MR. QUILLMAN: If you look at -- put the
9 map back up, we can give you a ballpark number here.

10 Again, this is the managed trail, all of this is
11 critical habitat from here south, all of the way to the
12 I-15.

13 In this neck of the woods over here and
14 Ft. Irwin road comes kind of up over this way. There
15 are probably twenty to thirty per square mile,
16 relatively dense population.

17 Further down here it's probably less than
18 ten per square mile.

19 And certainly that number is, the ten per
20 square mile is an average of the Superior, Cronese
21 delima (phonetic) this is a relatively hot spot, and
22 then there's another spot where there's twenty to thirty
23 over here by the Muddy Hills just due north of Barstow.

24 MR. RAY: Is that a critical area?

25 MR. QUILLMAN: It's designated as

0118

1 official desert tortoise critical area.

2 Every five years you're supposed to
3 rewrite your desert tortoise recovery plan, and the Fish
4 and Wildlife is currently doing that, and they could
5 designate the -- they could change the listing status
6 from threatened to endangered, they're considering doing
7 that on the west Mojave.

8 MR. CHAVEZ: Who determines how many
9 tortoise crossings you need in this area?

10 MR. GUNDRUM: Fish and Wildlife will
11 mandate and they agree with it or disagree, and then
12 they'll come back and say "No, you need more than that."

13 And I've had them tell me we're doing
14 overkill, "We don't need to put that many in there based
15 upon the density of the tortoise."

16 MR. BRITT: They'll actually have a
17 hatchery out there as well

18 MR. QUILLMAN: Gosh, it's been ten or
19 eleven years or so now, over on the southeast corner of
20 the installation we initiated a desert tortoise
21 hatchling program, and the reason for that was we really
22 didn't know how desert tortoise hatchlings behaved. All
23 of the scientists go out and look, they go out in April
24 and look for these guys as they come out of hibernation.

25 So we put these pens in and the first year

0119

1 the tortoise biologists went out and opened up the pens
2 to see what was out there. These pens are almost an
3 acre, and there's tortoise proof fence around the bottom

4 so nothing can dig in to get the tortoises, chicken wire
5 to keep Ravens out, so.

6 It's a static area of about an acre, and
7 we got three of those pens out there now.

8 When they, the biologist, went out there
9 the first spring the tortoises had been moving around
10 for three months because the tortoise, the hatchling is
11 about this big and the surface-to-volume ratio of a
12 tortoise is relatively low when they're little like
13 that, so they can heat up on a warm day in January and
14 cruise around and start eating, whereas the bigger guys,
15 they take a whole lot longer to warm up, so they have to
16 wait until the weather is a lot warmer, so over the past
17 ten years we've released back to the wild about 250
18 tortoises that we've reared.

19 MR. RAY: Are they doing okay?

20 MR. QUILLMAN: They're doing well, and
21 we've now expanded this over to Edwards Air Force Base
22 funded by Ft. Irwin because we started this program.
23 Fish and Wildlife said, "Now you can look someplace
24 else," so we went over to Edwards where there was an
25 area where there was absolutely no tortoises, and we put

0120

1 up mobile pens, so we put gravetini (phonetic) in there,
2 they laid the eggs, and some of the pens we were going
3 to go pull up right after they hatch, some of the pens
4 we were going to leave for a year, and another pen we
5 pulled up after the female laid their eggs, so when the
6 little guys come up out of the ground, they're home,
7 they're hatched, that's where they want to be.

8 We're looking at that program to increase
9 populations of the tortoise in -- in places where
10 they're gone.

11 One of the demises of the desert tortoise
12 is there's a disease among the population called the
13 upper respiratory tract disease. It started up way up
14 north in the West Mojave in the Desert Tortoise
15 Management Area, and it's pretty much decimated the
16 Superior -- I mean the Fremont Kramer edwima (phonetic),
17 at least to the north, and eventually Fish and Wildlife
18 will let us take females from over here in Las Vegas,
19 put them in those pens, let them lay eggs, put them back
20 where they came from, you know, Las Vegas has got this
21 tortoise nursery where they build casinos and whatnot,
22 you know, bring tortoises into that place, they'll test
23 them for upper respiratory tract disease, and if they're
24 healthy, they'll relocate them between Jean and Primm on
25 the north side of that freeway, there's a huge area out

0121

1 there where they probably put out 5,000 tortoises in the

2 last ten years.

3 The down side of that is they've also
4 euthanized a number of tortoises in that holding
5 facility in Las Vegas, and we could use those animals as
6 breeding stock for this hatching program because we've
7 proven through research funded by Ft. Irwin that U R T,
8 upper respiratory tract disease is not vertically
9 transmitted, in other words, a female could have R T D
10 and lay perfectly healthy hatchlings, and as long as the
11 hatchlings and adults are separated and they don't rub

12 noses, that's how that disease is vectored between them,
13 it's exchange of bodily fluids, so if you take a
14 diseased female, she can lay healthy eggs, and we can go
15 out and repopulate the desert.

16 We had to do this very slowly to make sure
17 we don't create something called Typhoid Mary where you
18 decimate the adult population, but it's based on sound
19 scientific research, and we're at the leading edge of
20 doing that.

21 MR. RAY: It's interesting because I
22 attended one of those, and they talk about hatchlings,
23 but they don't know if it would work because when they
24 put them out -- back out in the desert, they'd have
25 their own territory area, they don't know what's going
0122

1 to happen.

2 MR. QUILLMAN: That's the advantage of
3 this program here is when you go out and put a female
4 out there, she lays eggs; now the little guy comes out
5 of the ground, that's where he was born and that's where
6 he wants to be and that's where he's going to establish
7 his territory.

8 So I think there's nothing but positive
9 coming out of the territory.

10 MR. RAY: This guy has studied, do they go
11 way far back, I don't know, I would say eight years ago,
12 and they still didn't understand the difficulties.

13 MR. QUILLMAN: We don't, we can't figure
14 out how to best count them, so there's a whole lot of
15 difference of opinions, but we're making effort to go
16 out and help in the recovery

17 MR. BRITT: Thank you, Mickey

18 MR. QUILLMAN: Thank you

19 MR. BRITT: At this time the floor is
20 open for discussion on any topic, almost any topic you'd
21 like to talk about. I've got to qualify that.

22 Do you have any questions, concerns or
23 comments? We'd love to hear them.

24 MR. CHAVEZ: This is your second draft?
25 Or is this the first?

0123

1 MR. BRITT: What are you asking?

2 MR. CHAVEZ: This one, are we supposed to
3 comment back on this, review it?

4 MR. BRITT: Yes, sir.

5 MR. CHAVEZ: Come back with our comments?
6 I mean is there a deadline on this.

7 MR. BRITT: We'd like to get your
8 comments, you know, as soon as possible.

9 It's not -- it's not a requirement that we
10 did this study.

11 Ft. Irwin took this study on so that they
12 could better manage their resources.

13 The problem is it's a contracted study,
14 and eventually I've got to pay these people and we've
15 got to get the report finalized.

16 What I've discussed doing is at some point
17 in the future we will finalize it, but that doesn't mean
18 it's going to be a static document.

19 We'll probably do annual updates to this

20 report; we'll probably do further ethnographic studies
21 with each tribe, so this is really a baseline study.
22 It's mainly provided for your information.

23 We'd love to have your comments on it. I
24 don't want to give you a definite date, but eventually I
25 have a contract, I have to fulfill my obligations, but
0124

1 that will not foreclose on your opportunity to add
2 comments, just put in a later edition.

3 Well, I know if Chad was here he would
4 have something to say

5 MR. KANE: I don't want to start a big
6 argument

7 MR. BRITT: You don't think Chad would
8 have things to say?

9 We truly value everybody's opinion. We
10 understand we don't see eye to eye, but that's the
11 purpose of these meetings. My job is a moderator. I
12 don't work at Ft. Irwin. I'm a facilitator and
13 moderator; my job is to help them understand your
14 perspective as well as, you know, understand their
15 perspective as well, so that's my role in all of this.

16 MR. RAY: I understand -- I'll just put
17 it in words about the eligible artifact, stuff like that

18 MR. BRITT: Yes

19 MR. RAY: Is -- one comes to me, in my
20 mind, anyhow, to me I think anybody -- nobody would
21 think are in fact, the shell of the desert tortoise.

22 MR. BRITT: The shell of a desert
23 tortoise.

24 MR. RAY: If they're trying to find out
25 who lives in the area, Ft. Irwin that's what they're
0125

1 familiar with because that would be thrown away because
2 it's not in evidence that it was there.

3 MR. BRITT: Right.

4 That's a big dilemma that archeologists
5 have to deal with, is 90 percent of the material that
6 they use, skins, rope, twine, clothes, you know, all of
7 that's gone, it's perished.

8 It's the rocks and the fired ceramics and
9 petroglyphs, rock chips. Very little of the material
10 culture from the prehistoric peoples is left today, and
11 we're trying to put together those pieces of the puzzle
12 to better understand the past.

13 And, you know, significance is indeed a
14 dynamic concept, it's not what they said on this day,
15 therefore, it's always going to be. This is what is
16 significant or not, because it changes and we share and
17 change information.

18 Their interpretation of what we need to
19 protect at Ft. Irwin is certainly going to change, and
20 that's the big thing I want to make a point of here is
21 if we don't know what's important or what types of
22 resources are important, we can't effectively manage
23 them.

24 MR. RAY: It's interesting, we talked
25 about the desert tortoise. I know if there's some
0126

1 there, if there was a lot of them, I know who lived

2 there, that's my prime thing
 3 MR. BRITT: Sure.
 4 Yes, sir?
 5 MR. TITO SMITH: I think the concern that
 6 we all have here is we still have the monitor situation,
 7 I think that we want to pursue
 8 MR. BRITT: That is --
 9 MR. TITO SMITH: The facility, I think
 10 this is a concern of all of us, you know, we don't -- We
 11 don't possess that piece of sheepskin that says we're
 12 archeologists or we are consultants
 13 MR. BRITT: We understand.
 14 MR. TITO SMITH: We want to monitor our
 15 own resources, and we don't have the documentation that
 16 we are.
 17 And we're saying when you do this, you get
 18 proper --
 19 MR. BRITT: I made the point yesterday
 20 saying that we as archeologists know about archeology,
 21 we don't know about tribal histories. And again, that's
 22 one of the reasons why we're here.
 23 Whether or not Ft. Irwin is authorized to
 24 compensate tribal elders for their participation, I'm
 25 not -- I don't have the knowledge to address that.
 0127
 1 I know that's something that I think they
 2 hear very clearly on that, that is something that you
 3 all would like to see Ft. Irwin pursue that and see what
 4 they could work out.
 5 I think Mickey is committed to checking
 6 into those, into those avenues of ways we can work
 7 together better
 8 MR. QUILLMAN: One of the first things
 9 I'm going to do is get over to Nellis and look at their
 10 cultural resources program, find out how they've
 11 actually gone through the contractual situations to hire
 12 Native American consultants for their projects, and I
 13 will make every effort that I can to insure that we
 14 comply with your wishes along those regards, if I can
 15 contractually find a way to do that we will do that.
 16 MR. RAY: Well, you know at the first
 17 meeting we had at Ft. Irwin I thought we brought that
 18 issue up. And somebody was supposed to look in to see
 19 if that could be done because, we were saying the same
 20 thing that's being said here today, archeologists get
 21 paid a hundred bucks an hour, two hundred bucks an hour.
 22 MR. QUILLMAN: Wait a minute.
 23 (Laughter)
 24 MR. BRITT: None that I know.
 25 MR. RAY: We as Indians that are affected
 0128
 1 in this area, we get nothing, and you're trying to
 2 extract information from us for nothing, and whoever is
 3 doing the planning, you know, should have given it some
 4 forethought to say, "Hey, you know, are we going to
 5 continue to take from the Indians," and never give
 6 anything back for their experience?
 7 You know, that's -- that's worth a lot of
 8 money, you know, and like somebody made mention that our
 9 elders are getting old, you know. In fact, we have to

10 pay someone to drive them down here, and that's coming
 11 out of their own pocket to have extra, because we don't
 12 have, you know, that person here at the meetings.
 13 But that was our point, and we expressed a
 14 long time ago at the meeting, almost a year ago to date
 15 MR. BRITT: Sure.
 16 MR. RAY: You know, we talked about that
 17 same-o same-o, and here we are talking about the same
 18 old thing, and it seemed like whoever is making the
 19 decisions to do these kind of things would say "Well, my
 20 gosh, shouldn't we be paying those people with that
 21 knowledge?" You know, and we're not doing it.
 22 And I think that's the resentment I feel,
 23 you know, because you're going to put us in this big
 24 book and everything you put in here other than paying
 25 for my -- which was a beautiful luncheon -- will go into
 0129
 1 this book, and it may go into the archives in Washington
 2 D.C.
 3 You know, and they'll say, "Hey, we pulled
 4 another fast one over those Indians, we didn't pay them
 5 again, look what they gave us," you know, and I think
 6 that's the feeling, we do every time, because we know
 7 everyone else is getting paid except us.
 8 This lady had to take time off from her
 9 work to come down here. I've got to pay her for that
 10 time that she's down here. You guys should be paying
 11 her. You know, and that's what I feel, you know, I
 12 mean. Myself, I'm on a salary, no big deal.
 13 MR. HORALEK: Obviously, if I can add a
 14 little light to that, I was at the meeting last year,
 15 and to be perfectly honest with you I heard a different
 16 -- a different set of facts at that time from what we've
 17 learned this time, and those set of facts are
 18 significantly different from our viewpoint and what we
 19 may be able to do going down the line.
 20 Last year the primary concern that I was
 21 hearing at that time was we were asking you to look at a
 22 lot of the documents that we have sent out to you for
 23 consultation, and asking you for your comments and
 24 responses, and we basically said we couldn't pay you for
 25 that, and that was still true then, and it's still true
 0130
 1 now.
 2 And let me explain that there is a
 3 limitation on these two issues.
 4 When we are doing a MICA process and
 5 that's really what the land expansion the cultural
 6 resource documentation and so forth issues are, we are
 7 required by law to go out to all of you and give you an
 8 opportunity to comment.
 9 There's no requirement that you do so, nor
 10 is there a requirement for us to get comments from you
 11 if you don't feel like it.
 12 And so that, because of the nature of that
 13 process, we can't compensate you. It's just simply
 14 giving you that opportunity. But we've talked about two
 15 things in the last day or so that are significantly
 16 different from that.
 17 One particularly with the study that they

18 presented you with, where we're trying to put together
 19 your history so that we can have a better cultural
 20 resources program, the idea of being able to come out to
 21 your tribes and ask you to be consultants on helping us
 22 get the most accurate history there possible, I believe
 23 is in fact compensatable and we can probably work that,
 24 that shouldn't be difficult.

25 MR. KANE: That's what I thought.

0131

1 MR. HORALEK: Also, we aren't taking from
 2 you in that regard without getting anything back.

3 If we're in fact able at the end of that
 4 process to give you a document and ourselves a document
 5 that very accurately describes your people's history,
 6 and all of the information that concerns that history in
 7 this area, like the map that you're looking at there,
 8 that will be extremely beneficial to you for a number of
 9 other purposes, so you will get something besides what
 10 I'm talking about, being able compensate you to help
 11 us put that together to where we both get a benefit from
 12 it.

13 MR. KANE: And that's a classic example,
 14 you know, that's a classic example, you know, the
 15 gentleman, he did it himself, he handed it to you, it
 16 didn't cost you a penny to get that thing, but it will
 17 become part of your informational.

18 MR. HORALEK: Absolutely. As I say,
 19 walking into federal court, which I've done many
 20 times --

21 MR. KANE: I would keep it for myself and
 22 say "Until you pay me you're not getting it."

23 MR. HORALEK: Bear in mind, as I say,
 24 having said -- having spent a lot of time in federal
 25 court, if you ever happen to be in that federal court
 0132

1 again on issues like this, and you have this book that
 2 we have both put together and worked on as a very
 3 accurate document, and the first thing that it says on
 4 the top of it is that it's a federal document, that's
 5 going to carry an awful lot of weight for you.

6 So there is a benefit for you.

7 MR. KANE: You've talked about being in
 8 federal court, you know, I've been an Indian all my
 9 life, and I know what it's like to be an Indian to know
 10 it's been taken to the cleaners.

11 So, you know, don't give me anything like
 12 that. The other -- if it's a question of money, I'll
 13 tell these two people "Don't submit your darn billing
 14 because the Army can't afford it."

15 MR. HORALEK: There are days when that's
 16 true.

17 (Laughter)

18 MR. KANE: If that's the problem, but I'm
 19 just speaking because it seemed like, you know, we're
 20 talking about the same thing we talked about last year,
 21 that we were going to look into the issue.

22 MR. HORALEK: That's what I'm saying,
 23 actually they are different.

24 MR. KANE: What were the results?

25 MR. HORALEK: I still can't pay you for

0133

1 making comments. I can perhaps, based on what we've
 2 discussed in the last two days, be able to come out and
 3 pay you when we want to develop history and so forth.

4 MR. KANE: Because we said the same thing
 5 last year, we used the example -- the gentleman that was
 6 here, what was his name? Chad, said the same thing last
 7 year. He brought up the Nellis thing, you know, and
 8 here we're talking about you say it's different

9 MR. BRITT: That's what -- you're making
 10 a good point, if you really want to know what everybody
 11 said, look in that report right there, and it will tell
 12 you.

13 But the point is, I think Bob is making a
 14 good point, is that we can't pay you to review our
 15 documents and comment on them.

16 But he thinks it is feasible to pay tribal
 17 elders and tribal experts to work with us to develop
 18 histories.

19 MR. HORALEK: And we're looking now --
 20 based on that --

21 MR. BRITT: To possibly monitor sites on
 22 a case-by-case basis.

23 MR. SWAIN: Let the record show again that
 24 when you meet again next year they'll say the same
 25 thing.

0134

1 MR. KANE: I don't think that we said we
 2 want payment for comments or review your work

3 MR. BRITT: We're mixing apples and
 4 oranges here. What we're talking about is a
 5 conversation that you weren't here last year that was
 6 brought up in our first meeting about --

7 MR. KANE: I'm not going to back to last
 8 year. I know I wasn't here. I'm just staying that he
 9 made a comment about paying us for comments and
 10 reviewing the book or whatever. We're not asking that,
 11 you know, we take that on ourselves when the book comes
 12 to our tribe, you know, to review it and look it over.

13 MR. CHAVEZ: That's our responsibility.

14 MR. KANE: But if we don't want to make
 15 no comments, then we don't

16 MR. HORALEK: That you have a perfect
 17 right to do.

18 MR. KANE: We figured out why we don't
 19 want to make no comments, but the subject here is the
 20 monitor out in the field.

21 MR. BRITT: And again, they're making
 22 every effort to --

23 MR. KANE: Just like that railroad spur,
 24 okay? I mean what are we going to do there? You know,
 25 I mean because we've been all over this country, there

0135

1 ain't any place you can go that we haven't been already,
 2 you know, we don't know what lies underneath the ground
 3 when you start digging up that railroad spur

4 MR. HORALEK: You're actually doing
 5 yourselves some good and ourselves some good in that
 6 regards.

7 MR. CHAVEZ: Let's cut short the argument

8 and let Mickey converse with Nellis and let him see how
9 they set up their program.

10 MR. QUILLMAN: I will get you a response,
11 I will get you a response from what I found at Nellis
12 within 90 days.

13 I will also answer the question as to what
14 we can contract for and what we can't, and I'll put that
15 in writing to you.

16 MR. DONALD SMITH: What Tito was trying
17 to say, I don't know if he's trying to say this, but he
18 don't trust you guys, and I don't neither, because one
19 time they was having a survey, BLM for a racetrack for
20 Parker, on the California side, and they only found
21 three sites, or three things where archeological -- I
22 went out there within eight miles I found three. And
23 that thing was a forty-mile stretch

24 MR. BRITT: I understand.

25 MR. DONALD SMITH: So when they went back
0136

1 they found a lot more, and they used someone else

2 MR. BRITT: Sure.

3 Our mission at Ft. Irwin, it's much
4 better. It's much more cost-effective and
5 planning-effective to know exactly what you got, and
6 that's why they spend probably a lot more money than the
7 BLM does when they're contracting cultural resources,
8 it's not just archeologists, we've got ethnographers,
9 we've got geomorphologists, we've got geographers and
10 some -- and it's a multi-discipline approach, and the
11 bottom line is oftentimes you get what you pay for.

12 MR. DONALD SMITH: Looks like you were at
13 a library getting all of this, you know, I mean I read
14 some of it.

15 MR. KANE: You get what you pay for.

16 MR. DONALD SMITH: I read some of this, I
17 read Garza's Trip From The River, from Yuma down east to
18 Los Angeles, I believe, or Santa Barbara, I forgot which
19 one, but that's what you guys got in this report, when
20 you say you -- I always think "Oh, he's in the library,
21 getting these," boy

22 MR. CHAVEZ: I'd suggest Mickey get ahold
23 of Richard Arnold, who's been working with Nellis Air
24 Force Base and at the Yucca Mountain test site.

25 MR. BRITT: Keith Meyer is --

0137

1 MR. CHAVEZ: Unfortunately people that
2 should be here that was probably not consulted because
3 they're not a recognized tribe, but he's been working
4 closely with all of us out there on the Nellis Air Force
5 Range and knows the working dynamics of this whole
6 project, this whole project from the beginning.

7 MR. QUILLMAN: What's his name?

8 MR. CHAVEZ: Richard Arnold

9 MR. BRITT: Keith Myer is the cultural
10 resource manager at Nellis as well. I can get you his
11 number if you need it

12 MR. RAY: He went to a different area

13 MR. CHAVEZ: Exactly, and I would suggest
14 maybe you might want to meet with him, he works at the
15 Las Vegas Indian Center, and probably take him out with

16 you when you go out there

17 MR. QUILLMAN: Okay.

18 MR. RAY: He wants to be part of this, he
19 already told me that, just that he has a lot of
20 pertinent information which we're concerned about which
21 he should be at this table today.

22 MR. TITO SMITH: Kenny said he did, he'll
23 talk with him.

24 MR. ANDERSON: I'll talk with him.

25 MR. KANE: But neither one will get paid

0138

1 MR. BRITT: Everybody wants to get paid.

2 Everybody wants to get paid.

3 (Laughter)

4 MR. BRITT: That's no doubt about that

5 MR. QUILLMAN: I feel I have a lot of
6 research to do

7 MR. BRITT: I think Ft. Irwin has
8 demonstrated a willingness to explore all avenues so
9 that they can come up with an answer

10 MR. CHAVEZ: Let's be realistic, if we
11 can spend billions on rebuilding Iraq and other
12 countries, I'm sure we can fork out a couple pennies to
13 have a consultant out there.

14 MR. BRITT: Yes, as far as priorities,
15 that's what I do, Lee, you know I don't do that.

16 MR. DONALD SMITH: Neither do I, but I
17 pay for it

18 MR. BRITT: Yes. Exactly. We all have
19 something in common

20 MR. RAY: Where I used to work at, the
21 casino up there, we had students come from Korea,
22 Poland, I don't remember, elsewhere, and I talked to
23 some of the Polish people how do they like it here in
24 the United States. They didn't like it. Why? Because
25 America is all about money, and that's I guess that's
0139

1 why we're asking to pay us too

2 (Laughter)

3 MR. TITO SMITH: We know the value of a
4 dollar

5 MR. BRITT: That's right, I'll agree.

6 I'll agree.

7 MR. DONALD SMITH: We forgot about the
8 bead

9 MR. TITO SMITH: We used to barter, but
10 it don't work any more.

11 (Laughter)

12 MR. BRITT: We've got time to kill until
13 Chad gets back

14 MR. RAY: Did he go check on the Bureau
15 of that Reclamation?

16 MR. QUILLMAN: That's where Chad went

17 MR. BRITT: He said he would be back at
18 1:30, but we'll give him a few more minutes

19 MR. BARI: Chad told me I think we have,
20 but I will still want to bring that back on this -- on
21 this getting together and actually last year, we have to
22 have something so that in case of any -- any discovery
23 of human remains, we have set procedures, and we know

24 who to consult and who to work with and, you know, when
25 we have that document signed you will know what you will
0140

1 be expecting from us, and you'll know what to expect
2 from us, so I need to open up the -- this conversation
3 again, what you feel about that, and when it will be
4 possible to have that kind of effectiveness

5 MR. GUNDRUM: I think in the meantime,
6 Tad, and correct me if I'm wrong, until something gets
7 signed we will basically follow the standard operating
8 procedure

9 MR. BRITT: Sure, sure, we're obligated
10 to do that

11 MR. BARI: Yes

12 MR. GUNDRUM: And I know the people in
13 the room here need to take this back and consider it and
14 read it and talk to their tribal council

15 MR. BRITT: Sure. Yes, we need to get
16 vital information from the tribes

17 MR. GUNDRUM: Right

18 MR. BRITT: One thing, Muhammad did
19 mention, this is kind of related but on a different
20 subject, is during Mac's leave in December of this year
21 we would like to take some site visits, the Native
22 Americans out to the Whale to look at some of the sacred
23 sites.

24 It's about a three-week open period, it's
25 in December, it's cool, but it's near Christmas, but I
0141

1 know people have travel and families coming in, but if
2 we could do it possibly early in December, we could make
3 some field trips out to the Whale.

4 MR. QUILLMAN: I will get Chad a list of
5 dates.

6 MR. BRITT: Okay.

7 MR. QUILLMAN: That we can, even before
8 Mac's leave, because we typically have a rotation that
9 comes into thirty days, the first week, taking their
10 equipment off their train, getting everything ready to
11 go out in the field, and then they go out and fight a
12 real war, go two weeks and then come back.

13 So typically I have about two weeks where
14 I can go anywhere I want downrange, within reason, and
15 even before December I'll give Chad a list of dates.

16 MR. BRITT: We'll send them out

17 MR. QUILLMAN: We'll send them out and
18 that way we'll know when we can do that, and I'll make
19 every effort to make your dates match with ours, and we
20 can get you out there.

21 At the same time, we can even drive the
22 fiberoptics route and look at some of those 23 sites or
23 whatever it was, 38.

24 MR. RAY: Send Chad some money, too

25 MR. BARI: I thought you wanted to see
0142

1 the sites, and that's why we are offering that, you are
2 more than welcome to come over there to see what we have

3 MR. QUILLMAN: Right

4 MR. BARI: I'm sure most of you --

5 MR. BRITT: We could even have a

6 follow-up meeting then, if we had enough participation
7 to have a day of meetings and a day of site visit.

8 Maybe we'll have some answers then

9 MR. BARI: Let us know who is interested
10 and wants to come over here. The minutes are supposed
11 to be in here.

12 LT. COL. OGDEN: This document

13 MR. BRITT: We sent those out several
14 months ago, the Colorado Indian tribe should have a copy
15 of that. It was sent to the tribal chairman

16 MR. SWAIN: I'm not from Colorado River

17 MR. BRITT: I know I was answering a
18 question. Your tribe should have one, every tribe, all
19 14 tribes, one has been sent to each tribal office,
20 maybe two or three copies

21 MR. RAY: It wouldn't hurt to have more,
22 Colorado Indian tribes, you have four tribes there.
23 Sometimes I can't get access to anything. I've never
24 seen that book you're talking about

25 MR. BRITT: That's right, sure. We're
0143

1 here to share information, we've got information

2 MR. GUNDRUM: I've got an extra copy in
3 my bag.

4 MR. BRITT: Okay. He can give you one

5 MR. RAY: Thank you

6 MR. BRITT: I wanted to make sure Lee had
7 one because he wasn't invited last year and he's part of
8 the process now, so I brought one copy and --

9 MR. RAY: I wasn't here last here neither

10 MR. BRITT: But your tribe was sent one
11 because the Colorado Indians were there. Every tribe --
12 The point I was making they weren't invited last year,
13 all of the tribes, thirteen tribes were invited last
14 year.

15 MR. CHAVEZ: Remember, what I told you
16 about that process, sometimes it doesn't work, try to
17 get the names of the individual people and address.
18 That way you make sure

19 MR. BRITT: Do you have that list that I
20 gave you yesterday, a list of all of the tribes? Let me
21 show you what we're doing now.

22 LT. COL. OGDEN: Are you talking about
23 this one?

24 MR. BRITT: Is that a list of all of the
25 tribes? Yes.

0144

1 See, what we do here, Lee, is we got
2 tribal elections, who the contacts are, different tribes
3 have varying numbers of contacts, and we date it because
4 with the Timbisha Shoshone, the tribe is in a state of
5 flux right now.

6 MR. CHAVEZ: Yes, it is.

7 MR. BRITT: You know, we tried to get our
8 letters to them. I don't know if our letters were
9 received.

10 MR. CHAVEZ: That's what I'm talking
11 about. Sometimes, depending on who's in council at the
12 time, it's not necessary, it don't work through the
13 chains.

14 MR. BRITT: We do the best we can. I
 15 mean it would be very improper, Georgia Kennedy is
 16 still -- just as an example -- Georgia Kennedy is still
 17 the recognized chair for Shoshone, at this point as of
 18 the 26th
 19 MR. CHAVEZ: I understand, they have
 20 three councils.
 21 MR. BRITT: Exactly. And it would be
 22 improper for the US government to send letters to these
 23 other persons that were not federally recognized, so we
 24 have to be sensitive and fair and not discriminate
 25 MR. CHAVEZ: That's one of the issues,
 0145
 1 that's one of the issues where we disagree, where a lot
 2 of people disagree with as far as BIA and stuff,
 3 managing, overseeing tribal governments, because of this
 4 situation right here alone, they won't recognize anyone
 5 per se at this point other than --
 6 MR. BRITT: They recognized --
 7 MR. CHAVEZ: No, no, other than -- excuse
 8 me, let me finish, sir.
 9 The council that was in there prior to the
 10 election, that's what they're sticking with, but they
 11 had an election and then they had another election.
 12 That's what I'm getting at. The BIA is not resolving
 13 this.
 14 MR. BRITT: Well, I understand that
 15 and I appreciate that, but if you could -- understand
 16 the government's perspective, it would be very unfair to
 17 recognize a group and discriminate against the group
 18 that is recognized, and so by law we have to do that
 19 MR. CHAVEZ: But then in a sense you're
 20 discriminating against a group that are probably people
 21 recognized
 22 MR. BRITT: That's the law. If we start
 23 acting outside the law --
 24 MR. CHAVEZ: That's government relations
 25 MR. BRITT: -- we're going to get in a
 0146
 1 lot of trouble
 2 MR. SWAIN: Didn't we discuss that this
 3 morning and they were going to look into it again, that
 4 issue, about the un-federally recognized types?
 5 MR. BRITT: We can -- Bob, you answer
 6 that.
 7 I'm going to let you answer that.
 8 LT. COL. OGDEN: That way they can be
 9 invited, they could be
 10 MR. HORALEK: You have two issues. One
 11 is the federally recognized tribe. Other than the
 12 limited NAGPRA issue we don't care, if we have three
 13 groups right now that potentially are equal, we can send
 14 the information to all three
 15 MR. CHAVEZ: That's the way we view it.
 16 MR. BRITT: I would disagree with you on
 17 that. On the 106. They define what a tribe is
 18 MR. HORALEK: They can define whatever
 19 they want. I'm telling you, you can send it out to all
 20 three if you have a point of contact and, they won't
 21 violate anything

22 MR. BRITT: Yes, you can send it out to
 23 whomever. But you're required --
 24 MR. HORALEK: We've met the requirement.
 25 I said we want to go beyond the requirement
 0147
 1 MR. BRITT: Again, I want to try to be
 2 fair and not discriminate against the federally
 3 recognized tribes, the ones that we're required to
 4 consult with
 5 MR. CHAVEZ: And I feel you met that
 6 obligation. Now you're going up above and beyond, "Hey,
 7 you're more great in our eyes."
 8 MR. BRITT: Some of these people have not
 9 spoken and they may disagree with you, and we want to
 10 respect the sovereignty of each nation, just because
 11 everybody in here may agree with it.
 12 There may be another part that comes in
 13 later, that says why didn't you consult with us and, you
 14 know, we're just trying to be respectful and fair.
 15 MR. CHAVEZ: What are you saying in the
 16 long-term?
 17 MR. BRITT: In the long term I don't
 18 know, we'll continue to go with the process
 19 MR. GUNDRUM: Three separate councils now
 20 MR. CHAVEZ: Actually, the BIA is only
 21 recognizing the council, I'm just using one example, is
 22 using a council that was in there before the previous
 23 election or this last election, there was election taken
 24 and the old council, some of the members didn't want to
 25 step down.
 0148
 1 And then in the meantime that process with
 2 the BIA taking a long period of time, and the people got
 3 tired because they're non-functioning so they had
 4 another election.
 5 So you have three governments now and
 6 they're all recognized by certain groups of the tribe
 7 themselves, which is a government besides your
 8 government.
 9 And but you guys are only recognizing the
 10 one that was in there prior to the election.
 11 MR. BARI: Two things
 12 MR. CHAVEZ: Which is the BIA recommended
 13 tribe or government
 14 MR. BARI: As Bob was saying, there are
 15 two things that we are looking at.
 16 Like, for example, if we're doing a NEPA
 17 process and we are asking interested parties to let us
 18 know if you want to review it, we send out a document to
 19 everybody who is interested and anybody who wants to
 20 comment on that can comment on that.
 21 MR. CHAVEZ: That's what I was getting
 22 at. These people would be interested groups, they're
 23 part of the tribe
 24 MR. BARI: We can send to any number of
 25 people, but when it comes like the NAGPRA requirements
 0149
 1 or 106 requirements, the law says that you are required
 2 to send this only to the recognized tribes
 3 MR. CHAVEZ: We understand that

4 MR. BARI: Then whatever the BIA has
5 given us a list, these are the recognized chairpersons,
6 these are the tribes that are recognized. We can only
7 send to those.

8 MR. CHAVEZ: No, no, no, you can go
9 beyond that you can meet that requirement but you can
10 also submit it to people, interested parties, right?
11 Didn't we say that?

12 MR. BARI: On the NEPA and other things,
13 but the ones which are legally required things, then we
14 will follow only the letter of law.

15 MR. CHAVEZ: Okay

16 MR. BARI: Any -- any information we can
17 provide to anybody, that is no problem.

18 MR. CHAVEZ: I think that's what we're
19 getting at, instead of dragging this out forever, let's
20 try to get it to all of the interested parties that are
21 concerned, even the ones that are non-federally
22 recognized, like a person who could help us here today
23 should have been here. That's what I'm talking about

24 MR. HORALEK: Part of that, though, is
25 you can provide us with -- when situations like this, if
0150

1 you will give us the contact, we'll make sure we get it
2 to them. That's what we really want to do

3 MR. CHAVEZ: Very good

4 MR. BRITT: Yes. Chad?

5 MR. CHAD SMITH: Yes

6 MR. BRITT: Would you like to say
7 something?

8 MR. CHAD SMITH: Well, it seems to me
9 that BIA intercedes when it's not wanted to intercede,
10 and does the Pontius Pilot routine of "This is purely an
11 internal matter of the Apache, you'll have to settle it
12 amongst yourselves."

13 And I think there's already been the
14 meeting at Las Vegas at the office of special trustee,
15 and there's one more meeting that they're having with
16 tribes that I'm pretty sure it was on the 30th of
17 September in Vegas, and that office of special trustee
18 would assume the environmental and cultural resource
19 management responsibilities that BIA presently
20 mismanages, in my opinion, or manages.

21 There's a lot to be said for what they do,
22 but -- and then there's 638 programs and compacting
23 programs as well with Interior Department and Indian
24 Health Service, where a tribe can replace a federal
25 agency on the reservation with what it does with tribal
0151

1 personnel under a contract or in compacting, assume
2 those duties at the present day funding level,
3 unfortunately, because it doesn't factor in inflation
4 and decreasing dollar values, so if you went after a
5 chunk of BIA's budget for ropes, maintenance on the
6 reservation right now, ten or twenty years from now you
7 wouldn't have enough to even pave a driveway or
8 something like that, you know.

9 It's -- to me it's the biggest dinosaur in
10 the United States government, it's an inverted
11 Pyramid.

12 And when I told my grandfather I was
13 interested in the ancient cultures and Apache tradition
14 and wanted to become an anthropologist and specialize in
15 archaeology, he made me promise to never work for the
16 BIA.

17 He just sends their boss Indian around or
18 burn Indians, or you know what.

19 And I've been a fed, but I've never been a
20 BIA employee, and I can't negotiate with him for him to
21 let me out of that promise because he's on the other
22 side now, in another realm of existence, you know.

23 It's -- and it has come down to between
24 Army or other federal agencies advocating on behalf of
25 Indian tribes in the past times against BIA for
0152

1 something that's inappropriate to be done, and then some
2 agencies using BIA as a front in order to go after
3 billions of dollars in individual Indian money accounts
4 to finance black programs and other things in Nicaragua
5 and places like that. So don't get me started on BIA.

6 But there is something about trust
7 responsibility that is recognized in the treaties
8 themselves, and really any tribe that is a federally
9 recognized tribe has a treaty, and any tribe that's not
10 a federally recognized tribe has a treaty that has been
11 ignored or hidden, and those that are executive order
12 reservations, internationally are recognized to have a
13 treaty that when one government agrees with another
14 government to do something, that's a treaty.

15 And so some tribes are under the mistaken
16 impression that they're not a treaty tribe when really
17 they are.

18 And we got into it with Yuma Proving
19 Grounds on their cooperative NAGPRA agreement, but the
20 base commander and the JAG, Judge Advocate General,
21 would not let the document go forward for signature by
22 tribes, so that Yuma proving ground could address its
23 trust responsibility and its NAGPRA responsibility to
24 tribes because of the two words, "trust responsibility,"
25 that were in the document.
0153

1 And those individuals for some reason
2 thought that there's only a trust responsibility on the
3 reservations and it's been proven, it's been held true
4 that Forest Service, Bureau of Land Management, Bureau
5 of Reclamation, Census Office, all have a trust
6 responsibility to tribes, some more clear-cut than
7 others, some that stem directly from the treaties like
8 being able to go onto the ancestral lands and visit
9 sacred sites and do such things, and others that are
10 more embedded in the agency itself.

11 And to me that trust responsibility is
12 quite flexible in favor of the tribes through the
13 doctrine of sympathetic interpretation of the laws, or
14 when there's things about to become disputed or
15 something like that, the agencies should kind of back
16 off a little bit and think it through and think "Well,
17 how can we first be culturally sensitive to the concerns
18 of the Native Americans."

19 Second, fulfill our trust responsibility,

20 and third, do everything we can to accommodate the
21 wishes of the Native Americans on this issue.
22 And it's -- it's getting there, you know,
23 and sometimes we get setbacks, lately more in the
24 Supreme Court than anywhere else where there seems to be
25 an anti-Indian attitude.

0154

1 Some non-Indians have told me, and it's
2 quite common that in the outside society there's this
3 attitude that "We, by God, gave those Indians the
4 reservations they're on now, and Congress, or we could
5 take it away any time we want."

6 So you think that through, there were
7 treaties and I got into an argument with a solicitor --
8 not the solicitor general, but a person from Interior
9 Solicitor's office where he said the United States
10 government owns the Indian reservations where the
11 Indians reside.

12 And I said, "Now back up," the tribes
13 entered into treaties where they gave up large amount
14 the predominant amount and in some cases all of the
15 amounts of their ancestral lands and retained tiny
16 amounts that were guaranteed to them that would be
17 theirs as long as the grass grows and as long as the
18 wind blows.

19 And if the United States were to back out
20 of these treaties, to abrogate these treaties, whether
21 officially on paper or by its actions, and attempt to
22 get the Apache people off of their lands, they would
23 have a state of war which existed before the treaty was
24 signed.

25 And all an Indian tribe has to do, like
0155

1 Germany or Japan or the Mouse that Roared is
2 successfully lose a tribe -- lose -- excuse the
3 misstatement -- lose a war with the United States and
4 get -- Well, we could use 87 billion dollars, you know,
5 for rebuilding and future entering back into the
6 national stage setup very nicely, and have tribal
7 museums, and some of these things are guaranteed in
8 perpetuity for the Indian people.

9 And people gripe about native gaming, the
10 Indian have their casino. One person right here at this
11 casino out there on the lawn was griping to me about the
12 Indians having their casinos and getting a check, and I
13 said, "Well, I've never got one," you know, but our
14 tribe doesn't give the per capita. But you're griping
15 about Indians having a casino here? My God, man,
16 you're standing in Nevada.

17 "Anybody with the wherewithal in Nevada
18 and a clean background can set up a casino, so what's
19 your gripe?"

20 "Well, the Indians get this, the Indians
21 get that," I said, "Listen, isn't it a small price to
22 pay for an entire continent?"

23 And now we see where tribal members that
24 are employed break his leg, go into Indian Health
25 Service down at Parker, and they're? Going to go after
0156

1 his health? Care that his employer in my opinion?

2 Mistakenly provides because tribal members? Should have
3 this health care as? Like veterans, as a quality of
4 life issue that's guaranteed to them by the federal
5 government for all generations for all-time.

6 And it's just not right that they go after
7 the health insurance as well.

8 And as Peterson Zawd, one of the past
9 presidents of the Navajo nations said, the Navajos have
10 paid their doctor bills at all times by entering into
11 that treaty, and one of the prime requirements under
12 that treaty was to no longer be at war with the United
13 States.

14 So -- and now some -- they're no longer at
15 war, but they're still -- a lady from Gila River
16 Reservation referred to it as the Cultural Warriors,
17 those who fight with computers and pens and Programmatic
18 Agreement critiques, and the rest of this, and either
19 way, whether it's Sitting Bull, Geronimo, Tecopa or
20 others fighting for the preservation of their people
21 through all of time, you know, it's -- it's real, and
22 it's very crucial, crucial and important to the Indian
23 people.

24 MR. CHAVEZ: On that definition, I
25 believe you left out one thing, and the other right of
0157

1 Native American people as far as people in this nation,
2 when those treaties and whatnot came to be was the
3 opportunity for self government, and now that's even
4 being intruded upon, that's being pulled away here like
5 the California, we're facing the issues about them
6 wanting the casinos to pay off their debt.

7 And now you got a clown in there, Arnold
8 Swartzenegger that's never been to war, that's a big
9 hero, and everybody on the screen is vowing to take all
10 of that money and shut down casinos if he has to.
11 That's ridiculous, any little thing they tell all of the
12 Native American -- first of all, the United States
13 created a third world country within the United States,
14 a lot of them, we are a third world countries.

15 We don't have to go to Iraq, anywhere else
16 to find a third world country, we have people starving
17 in the United States.

18 But once we get the opportunity to better
19 ourselves and improve ourselves, we always get this,
20 "Quit being a drunk, get off welfare, go to work create
21 something for yourself."

22 Well, we created, and then you try to take
23 it away.

24 When is it never going to stop?

25 MR. SWAIN: It's not
0158

1 MR. CHAVEZ: I mean we are a third world
2 country

3 MR. SWAIN: It's not going to stop
4 because you know sometimes like what the gentleman said
5 here, you know, you look at the federal government, you
6 look at the BIA, I look at all of the federal agencies,
7 whether BLM, or Army or whatever, they all have the same
8 attitude towards Indians.

9 When you go to the capitol, you know, they

10 look at you as "Who in hell are you?"
 11 You're like an invisible person walking
 12 around there and they walk right by you without
 13 acknowledging you.
 14 And when we -- when we talk about
 15 sovereignty and all of these other things as tribes, we
 16 can't even take care of our own problems within our own
 17 governments, and then we wonder why we have three tribal
 18 councils trying to set something up. Where are the
 19 people?
 20 You know, but no, you don't work that way,
 21 you don't base on the person's rhetoric and how smart he
 22 is -- you look at his family first and say "Oh, I don't
 23 want him, because he's not from my side of the family,"
 24 and that's where we start, when he look at all of these
 25 things.
 0159
 1 The cultural issues, we look at that. I
 2 look at my tribal standpoint, because my tribe, I try to
 3 get people interested in the cultural aspect of it and
 4 there's no one there.
 5 And I try to say, "Read this," you know,
 6 "Take your time, go back and study this."
 7 I look at stuff in here that I've never
 8 even seen before. Now, where in hell did they get this
 9 information? The man becomes smarter than us because he
 10 does all of the research.
 11 MR. CHAD SMITH: He's the expert on the
 12 Indian
 13 MR. SWAIN: And he's becoming the expert
 14 on the Indians because we're losing all of our own
 15 expertise, you know.
 16 And we're talking about, you know -- we're
 17 talking about our -- I'm talking about the Southern
 18 Paiutes I mean in here we're as far as Los Angeles, it
 19 never in my mind did I imagine that, unless they were in
 20 a '86 Cadillac heading down the highway, but here they
 21 say they went down in that area.
 22 And then I look at this area, were we
 23 really down in this area? You know, I don't know that
 24 much about our own culture to say whether that they did
 25 or that they didn't.
 0160
 1 We have people living on the Moapa
 2 reservation that have descendents from down in here,
 3 that when he talked somebody mentioned Tecopa, the man
 4 was in up in the Pahrump area, and history says -- and
 5 this is, again, just what you hear from people, that,
 6 you know, he was the last great chief from up in that
 7 area and then we're all descendants of that, you know,
 8 but then if we were to get together to pool our
 9 resources, then we might have something.
 10 But we're all in our own little area
 11 saying, "This is where we're from, and this is what
 12 we've done," you know, and unless we could get together
 13 to say we have all of this in common, you know, I mean I
 14 look at Ft. Irwin, you know, I look at the water over
 15 there, that had to be one magnificent stream of water
 16 coming out of that and into that desert, and can you
 17 imagine to learn about greenery around it and the ducks

18 and the fish and everything else?
 19 You knew -- you know that somebody, one of
 20 the Indians had to be camped near that spot or sharing
 21 it with everybody else as the spot to traverse to and go
 22 to, you know, going across the desert, and it's the same
 23 way, all the way up.
 24 We look at Las Vegas, if you look at Las
 25 Vegas Meadows when the Indians and Paiutes were camped
 0161
 1 there, you know, the white man came along and he took
 2 over those springs, chased the Indians away. We didn't
 3 have anything to fight him with, so he took over those
 4 springs all of the way up.
 5 Then we try to go back and recreate what
 6 had happened, you go down -- Kenny and I went to Las
 7 Vegas Wash, you look at all of the waste flowing down
 8 that, and it's bigger than our little river we have on
 9 the reservation.
 10 And it's what, almost forty feet wide and
 11 ten feet deep, and it's flowing into the lake, you know,
 12 and it's hard to imagine how these places looked at
 13 that time, you know, and that's what we're trying to
 14 create.
 15 I speak for my tribe because I know what
 16 we have up there, I know that our people are passing
 17 away.
 18 The young man here was 85 year old. He
 19 had a wealth of information, but how many people are
 20 really attacking his knowledge, how many are really
 21 sitting down and talking to that guy and saying "Tell me
 22 my oral history," you know, how many people really know
 23 that?
 24 We've lost -- my mom was 90 years old when
 25 she died. She took a wealth of information. Just
 0162
 1 because she was from my side of the family the leaders
 2 at that time didn't want to interview her to get that
 3 information. That's our fault, and we do that with
 4 everybody.
 5 I only talk about my own tribe because you
 6 guys have your own, you know, you may have up-to-date,
 7 you know, governments that are running, solving your
 8 problems you've got money invested all over, you're
 9 taking care of the health, we're doing that here because
 10 we know, like what you said, yes, we are entitled to
 11 that, but yet when it comes to the responsibility for
 12 our tribe we have health care and medical benefits for
 13 our people, and then we provide them the income so they
 14 can have a life in this community.
 15 We can't go back to the way it was, so we
 16 try to improve that, and that's what we're doing, and
 17 that's why I'm saying it's hard for us to understand
 18 some of those things.
 19 The government said, you know, they work
 20 differently and say that we'll pay you, I always -- in
 21 fact, I think you were there last year when we mentioned
 22 Doctor Stovall, how he was doing it, paying the Indians
 23 up there, you know.
 24 I can remember working for him twenty
 25 years ago, and he was giving me one hundred dollars an

0163

1 hour as a consultant.

2 Well, the issue was always different, you
3 know. Well, how he can do it and nobody else can? You
4 know.

5 But that being said and done, you know,
6 because we were talking about the same thing, we
7 talked -- you and I were here last year, and you
8 remember we talked about Richard Arnold. We talked
9 about some base in Texas, you mentioned where they were
10 doing something like this. We would check into it, here
11 it is a year later. We're talking about the same thing
12 and nothing has happened

13 MR. CHAD SMITH: Yes

14 MR. SWAIN: You know, so I'm saying, but
15 I always look at ourselves as our own worst enemy
16 because we're always fighting amongst ourselves instead
17 of getting together.

18 You talked about the trust funds, you
19 know, the government has the mechanism already in place,
20 they're having a meeting in Las Vegas in October, like
21 you say, on the 29th or 30th, and everything is already
22 done.

23 All you have to do is sit there and
24 listen. You know, because you can't change it. It's
25 already been done. Ross Wimmer is sitting in that

0164

1 Office of Indian affairs; they say Indian preference,
2 it's supposed to take precedence, all of these things.

3 He's hiring the white people up there, you
4 know. Since when could the government do that? You
5 know, so the Indians are losing out on those things, you
6 know, that again is a right given to Indians. That's
7 why it was there, you know.

8 MR. CHAVEZ: I'd say like to dwell on
9 that a little bit. What created that, though, before
10 this time, I mean even up to a hundred years ago was the
11 government itself, United States Government, which again
12 I'll say is divided and conquered, which had us fighting
13 over little pieces of land now where the whole country
14 was the people's land. That's what created that.

15 Then they start taking the children and
16 breaking them away from their family, divide the people
17 up, not permitting them to speak the language, to tell
18 these stories on to the younger people. That's what
19 happened.

20 That's part of our -- Yes. It is part of
21 our fault, right to today, but a lot of is the
22 government's fault by taking that away and dividing us.
23 There was a purpose for that, that's why we are at where
24 we're at right now, but trying to come back together, we
25 should.

0165

1 MR. SWAIN: Here, you know, they said the
2 Spanish traders came through here and they stole our
3 children, you know, and they sold them down in this
4 area. For all we know we probably have Paiutes all of
5 the way up and down the coast, do you know what I'm
6 saying?

7 And, you know, if you were sitting up

8 there on the hill watching us beating down the trail, at
9 least you could have said "There's a group of Indians,
10 they're not from us, but they're Indians, let's help
11 them out," but if you sat up on the hill you're just as
12 guilty as the Spanish traders taking the people down the
13 trail and that's one of the stories the people talk
14 about, and that happens all throughout history.

15 MR. CHAVEZ: I'll tell you a story that
16 actually happened, it's a big story, I won't name the
17 place, it might offend some people, but there was this
18 wagon train going through, they got caught in a
19 snowstorm and they were starving, so the Indian people
20 went down to help them but they kept shooting at them so
21 they went up and they them starve, and they ate each
22 other.

23 That's a true story. That's how people
24 felt. We felt for other people, we tried to help them
25 but yet they'd shoot at you because you're a heathen.

0166

1 MR. SWAIN: They still shoot at you
2 today, like the guy said, not with bullets, but by this,
3 you know, this is what they shoot at you with now, you
4 know, don't come and ask me for help.

5 MR. CHAVEZ: But these people would
6 rather eat each other than eat food. That's why -- go
7 ahead.

8 MR. SWAIN: Eat our own people, that's
9 what scares me.

10 MR. CHAD SMITH: The Apaches really don't
11 fight anyone else, they make peace, so they fight each
12 other.

13 MR. BRITT: Well, thank you all.

14 Chad, while you were away we made the
15 quick decision to take you up, if we could go visit some
16 sites today.

17 MR. CHAD SMITH: That's what we'll do

18 MR. BRITT: It's 2:15. We have -- go
19 ahead, Jennifer.

20 MS. SHORE: I've got the forms for your
21 travel reimbursement. Be sure to attach copies of your
22 receipts for your meals and your lodging, and you can
23 either fill it out here and give it to me, or you can
24 send it in to the address.

25 I would, just to be on the safe side, I

0167

1 would make photocopies of your receipts, just to make
2 sure if something happens to it in the mail, then you've
3 got a copy of it, and I'll give you my business card, if
4 you -- if something happens and you do not get payment
5 you can give me a call, and I'll track it down for you.

6 MR. BRITT: What we will do is we will
7 take a series of cars, carpool, caravan to these sites;
8 is that right, Chad?

9 MR. CHAD SMITH: Yes.

10 Going right across the bridge to The Twins
11 intaglio, and then up to Davis Camp. Davis Camp is on
12 up through Bullhead City north of the Laughlin Bridge
13 about a mile.

14 MR. BRITT: How far?

15 MR. CHAD SMITH: I'd say twelve miles

16 from here
17 MR. BRITT: Okay.
18 MR. CHAD SMITH: It's easiest to come
19 back across the bridge after we go across to The Twins,
20 come back across and go up this highway through
21 Laughlin. That way we avoid about eleven stoplights
22 MR. BRITT: Let's do it the easiest way.
23 Can I get a show of hands? If you're not going, what
24 I'd like to do is meet at 3:00 o'clock, be ready to go
25 at 3:00 o'clock, that's 45 minutes from now at the
0168
1 lobby, we'll have several cars.
2 I have a car, we have a car, you can ride
3 with us.
4 If you're not going, could you let us know
5 so that we don't leave you? I certainly don't want to
6 leave anybody.
7 (The hearing adjourned at 2:15 p.m.)
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0169
1
2
3 I, DENNIS D. STEINER, CSR #6, hereby certify
4 that:
5 I was present for the purposes of acting as
6 notary public and certified shorthand reporter;
7 That the transcript that appears hereinbefore
8 was transcribed by me as herein appears to the best of
9 my knowledge, skill and ability.
10
11
12
13 _____
14 Dennis D. Steiner
15
16
17
18
19
20
21
22

Appendix I: Post-meeting Action Documents

Letter to tribe requesting CA Info



DEPARTMENT OF THE ARMY
HEADQUARTERS, NATIONAL TRAINING CENTER AND FORT IRWIN
FORT IRWIN, CA 92310-5000

REPLY TO
ATTENTION OF:

Directorate of Public Works

Dear :

On behalf of Fort Irwin, National Training Center (NTC), we are contacting you regarding our request to collect information from your tribe regarding our efforts to complete a requirement of the Army to implement NAGPRA Comprehensive Agreements. We included a sample Comprehensive Agreement in your invitation letter of 28 August 2003, to the Nation-to-Nation conference held at the Ft Mohave, AVI Resort, Laughlin, NV on 2-3 October 2003.

A Comprehensive Agreement is an agreement between your tribe and the NTC. Its purpose is to clearly outline the types of materials to be considered for treatment under NAGPRA and states the steps to be taken whenever Native American human remains or related funerary/cultural items are found on the installation. Examples of some of the provisions include how and when to notify your tribe, as well as the protective measures to be taken during the interim period.

In the spirit of Nation-to-Nation consultation, we need you to provide us with the information listed below to complete our Comprehensive Agreement. Specifically, we ask that you provide the information that addresses:

1. What kind of materials should be considered "cultural objects? (Could you give us examples?)
2. We need specific information in order to determine custody of cultural objects and possible Native American remains. (How do we determine if objects belong to your tribe, or to another tribe in the Fort Irwin area?)
3. How would you prefer the NTC to treat, care for, and handle cultural objects and the possible remains of your ancestors?
4. How would you prefer the archaeologists to record information about cultural objects and the possible remains of your ancestors?
5. What kind of analysis would you prefer be used to identify cultural objects and possible remains of your ancestors?
6. What steps should we take if we inadvertently discover cultural objects or human remains? (For example, who should we contact in your tribe?)

-2-


7. What kind of traditional treatment should cultural objects or the possible remains of your ancestors receive?

8. What kind of reports would you like prepared regarding the finding of cultural objects and possible remains of your ancestors?

9. What would you prefer the NTC to ultimately do with cultural objects and the possible remains of your ancestors? (In the legal language of NAGPRA, how would you prefer for the NTC to dispose of them?)

The enclosed sample Comprehensive Agreement is based on similar agreements made between branches of the U.S. Government and other Native American tribes. The NTC realizes that each tribe has different traditions, values, and preferences, and so your tribe may wish to make changes to this proposed Agreement. We hope representatives and your tribe will review this Agreement, and work with us to create a document that is mutually beneficial to both your tribe and the NTC. We look forward to working with you; if you have any questions, please do not hesitate to contact Mr. Mickey Quillman at (760) 380-3740.

Sincerely,



Jeffrey S. Ogden
Lieutenant Colonel
Director of Public Works

Trip Report from Field Visit

**CA-SBR-5383 (WADI), CA-SBR-8268 (LITTLE WADI),
CASBR-5384 (FOSSIL BED SITE), CA-SBR-5349 (BITTER SPRING),
AND CA-SBR-5249 (PETROGLYPH SITE),
ON FORT IRWIN & NTC**



6 January 2004

INTRODUCTION

On January 06, 2004, six representatives from four federally recognized Native American Tribes, Fort Mojave Tribe, Chemehuevi Indian Tribe, Morongo Band of Mission Indians, and the San Manuel Band of Mission Indians (Table 1) visited five cultural resource sites at Fort Irwin, CA-SBR-5383 (Wadi), CA-SBR-8268 (Little Wadi), CASBR-5384 (Fossil Bed Site), CA-SBR-5349 (Bitter Spring), and CA-SBR-5249 (Petroglyph). These sites are located in the south eastern part of Fort Irwin & NTC. The purpose of the field tour was to foster budding relations with federally recognized Native American Tribes affiliated with the Fort Irwin and NTC area by providing them with an opportunity to visit some the installation's cultural resource sites.

Table 1. List of Participants

Morongo Band of Mission Indians

Mr. Britt Wilson, Project Manager, Planning and Economic Development Department

Chemehuevi Indian Tribe

Mr. Edward D. Smith, Chairman

Mr. Daryl King, Councilmen

San Manuel Band of Mission Indians

Ms. Ann Brierty, GIS Coordinator

Mr. Tony Mejia

Fort Mojave Tribe

Mr. Chad Smith, Tribal Archaeologist/Cultural Resources Manager

Fort Irwin & NTC

Mr. Darrell S. Gundrum, Archeologist

Mr. Harold Brewer, Archeologist

Mr. Brian Flynn, Archeologist

Mr. Shannon Freeman, Archeologist

Ms. Mary Hastings, Compliance, Environmental Protection Specialist

Mrs. Lisa Gundrum, Air Quality, Environmental Protection Specialist

Background:

The idea for the cultural resources field tour was proposed by Mr. Muhammad Bari (Chief, DPW Environmental Division) at the Nation-to-Nation meeting held at the Ft. Mohave, Avi Resort, Laughlin, NV on 2-3 October, 2003. At this meeting, many tribal representatives noted that few, if any, of their tribal members had ever visited the installation and its cultural resource sites.

Cultural Resources Tour

The morning, 6 January 2004, invited guest began to arrive at the Archaeological Curation Facility at 1000 hours for the cultural resources tour, where they were greeted by Fort Irwin Cultural Resources Program staff members and DPW Environmental personnel serving as vehicle drivers (Ms. Mary Hastings, Mrs. Lisa Gundrum). Mr. Gundrum showed the Tribal representatives around the facility, providing a brief overview of the cultural resources program and discussing various environmental displays and building components (Collection Room). Mr. Gundrum then provided a very short range briefing for the guest prior to tour initiation.



The ground tour of cultural resource sites began at approximately 1100 hours. Eleven personnel (6 Native American, 5 Fort Irwin) boarded four vehicles and departed for two petroglyph sites CA-SBR-5383 (Wadi) and CA-SBR-8268 (Little Wadi) located at the “Whale”. One DPW Cultural resources staff member and a vehicle remained at the Archaeological Curation Facility in case any invited guest arrived late for the tour. The ground tour, following the Langford Lake MSR, arrived at the Whale at approximately 1140 hours.



The group proceeded to examine the numerous petroglyphs throughout the “Wadi” site. The entire group examined all of the petroglyphs in the “lower” part of the site (approximately the first 150 meters of the Wadi). One Tribal representative, however, decided to return to the vehicles instead of climbing the Wadi due to a previously existing foot/leg injury.



Viewing petroglyphs at the “Wadi”.

This individual was accompanied by two Fort Irwin personnel, where they took the opportunity to view the petroglyphs at the mouth of the “Little Wadi” site near the vehicles. The remainder of the group continued to hike 700 meters up the Wadi to examine see the last petroglyph panel at the site (the petroglyph containing two Bighorn Sheep). After viewing the panel, the group returned to the vehicles near the Wadi entrance, rejoining the other members who returned previously.

Tribal representatives were interested in the “recent” graffiti at the “Wadi” site. Mr. Gundrum informed them that it had occurred





approximately 1 -1.5 years ago and that the Cultural Resources Program had pointed this out to the Fort Irwin and NTC Commander, Brigadier General Joseph F. Fil, Jr. (CG) during a recent cultural resources tour. They were pleased to hear that the CG was extremely displeased with the graffiti and was making sure that troops under his command knew that it was not permissible.

At approximately 1200 hours the group ate lunch (provided by DPW Environmental).

At approximately 1245 hours the group departed the Whale and proceeded to site CA-SBR-5384 (Fossil Bed Site) located adjacent to the Langford Lake MSR. The group walked over the site examining its abundant cultural artifacts (ceramic shards, ground stone, and lithic artifacts). The "Fossil Bed Site" is an important cultural resources site as it contains evidence of nearly the entire cultural chronological sequence for the Mojave Desert region. While listed as Off-limits on installation training maps, a large tank position was noted recently to have been excavated into the site. Site CA-SBR-5250 (Rodgers Ridge) was pointed out to the group but was not visited.





The group departed the “Fossil Bed Site” at approximately 1320 hours and headed towards Bitter Spring. The group stopped on the bluff along the north-eastern edge of the spring to provide a nice overview of the spring area, before proceeding to the south side of the spring where vehicles were parked. Upon arrival, the group walked up to view the military redoubt that was built in 1860 as part of Native

American-Euro American tension in the region at that time. Group members then walked throughout the spring area, viewing the water in the spring and examining some of the numerous cultural artifacts that are found throughout the area. Mr. Chad Smith, Fort Mojave Tribal Archaeologist, noted several areas which appeared to contain “ashy” soils, fire cracked rock, and burnt bone, some of which may be human. Nineteenth century historic accounts confirm that the spring is the location of human remains (Euro American and Native American); the presence of earlier Native American graves and/or cremation areas is highly likely. The fragment of an Eastgate projectile point type was observed in the area.

The group then departed Bitter Spring and drove to site CA-SBR-5249, a single panel petroglyph site located on the Whale. The group then departed this site at 1515 hours and returned to Garrison, arriving at the Archaeological Curation Facility at 1600 hours.



Conclusion

A brief wrap-up session was then held at the Archaeological Curation Facility. This session was attended by all six Native American Tribal representatives whom attended the cultural resources tour, LTC Jeffrey S. Ogden, Muhammad Bari, William “Mickey” Quillman, and Mr. Darrell S. Gundrum.

Dialog was opened and Native American questions and comments were solicited, particularly regarding the cultural resources tour and the installation’s Cultural Resources Program. All Native American Tribal representatives noted that they had a great time at the installation and thanked Fort Irwin personnel for the opportunity to visit the installation and view some of its cultural resource sites.

Ms. Brierty also asked whether other Tribal members would have the opportunity to visit the installation and its cultural resources sites. Ms. Brierty was informed by Fort Irwin personnel that cultural resources tours/visits could be arranged for any tribal members who wanted to do so, provided the training schedule permitted access, and tours were properly coordinated to maximize tribal attendance per any given installation visit.



REPORT DOCUMENTATION PAGE				<i>Form Approved</i> OMB No. 0704-0188							
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1. REPORT DATE (DD-MM-YYYY) 08-2004		2. REPORT TYPE Final		3. DATES COVERED (From - To)							
4. TITLE AND SUBTITLE National Training Center-Fort Irwin, California: Native American Consultations Held at Fort Mojave, Nevada, Held on 2-3 October 2003				5a. CONTRACT NUMBER							
				5b. GRANT NUMBER							
				5c. PROGRAM ELEMENT NUMBER							
6. AUTHOR(S) Tad Britt, Paige Peyton, and Tatiana Brecht				5d. PROJECT NUMBER MIPR							
				5e. TASK NUMBER 1R00935056							
				5f. WORK UNIT NUMBER 2GCERL0019							
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army Engineer Research and Development Center (ERDC) Construction Engineering Research Laboratory (CERL) PO Box 9005 Champaign, IL 61826-9005				8. PERFORMING ORGANIZATION REPORT NUMBER ERDC/CERL SR-04-23							
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) Commander, Fort Irwin Natural and Cultural Resources Office Bldg 385 Fort Irwin, CA 92310-5097				10. SPONSOR/MONITOR'S ACRONYM(S) AFZJ-PW-EV							
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)							
12. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited.											
13. SUPPLEMENTARY NOTES Copies are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.											
14. ABSTRACT <p>Many federal laws, regulations, and executive orders promulgated since 1990 specifically require consultation with Native American tribes when a federal agency makes decisions concerning cultural resources and traditional places. Consultation is founded on the Nation-to-Nation relationship between the United States and federally recognized tribes. To meet both the letter and the spirit of the law, the National Training Center-Fort Irwin, California, conducted a meeting as part of the agency's continuing consultation with tribal governments. The consultation meeting was hosted by the Fort Mojave Indian Tribe, a federally recognized tribe, and held at the AVI Resort and Casino owned by tribe, on 2-3 October 2003. Sixteen tribes were invited to attend. Attendees presented and discussed (1) Comprehensive Agreements (CAs) with individual tribes having a cultural interest in the geographical region, (2) the ethnohistoric and ethno-graphic cultural affiliation study of the mid-Mojave region, (3) Fort Irwin-NTC Programmatic Agreements (PAs) with individual tribes having a cultural interest in the geographical region, and (4) proposed undertakings on Fort Irwin and the current and projected measures for protection/mitigation of cultural resources within these project areas. A transcript of the consultation meeting is included in this report.</p>											
15. SUBJECT TERMS <table border="0"> <tr> <td>archeological resources</td> <td>Ft Irwin, CA</td> <td>military training</td> </tr> <tr> <td>cultural resources management</td> <td>meetings</td> <td>Native American</td> </tr> </table>						archeological resources	Ft Irwin, CA	military training	cultural resources management	meetings	Native American
archeological resources	Ft Irwin, CA	military training									
cultural resources management	meetings	Native American									
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON Tad Britt						
a. REPORT Unclassified	b. ABSTRACT Unclassified	c. THIS PAGE Unclassified			19b. TELEPHONE NUMBER (include area code) (217) 373-7288						